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Federal Communications Commission Record

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Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: May 15, 1995

PLEADING CYCLE ESTABLISHED FOR COMMENTS ON SNET'S PETITION FOR DECLARATORY RULING ON 800 DIRECTORY ASSISTANCE SERVICE

On May 8, 1995, the Southern New England Telephone Company (SNET) filed a petition requesting that the Commission issue a declaratory ruling that requires any company providing 800 directory assistance (800 DA) service to compensate another 800 DA provider each time the latter company answers a consumer call requesting an 800 telephone number controlled by a subscriber of the former company. SNET argues that compensation is justified in this circumstance since the 800 DA provider which answers the consumer's call incurs the cost of serving a caller which the other DA provider otherwise must bear. SNET argues that both the Communications Act and established communications policy require that one directory assistance provider compensate another for performing a service that benefits the former.

Specifically, SNET requests that the Commission require AT&T to negotiate an agreement with SNET for reciprocal compensation. SNET argues that AT&T has a monopoly in the 800 DA market and that without a reciprocal compensation arrangement, AT&T will have the ability to unilaterally block competition in the 800 DA market.

Interested parties should file comments on the petition by **June 16, 1995**, and reply comments by **July 7, 1995**, with the Secretary, FCC, 1919 M Street, N.W., Washington, D.C. 20554. A copy should also be sent to Peggy Reitzel, Common Carrier Bureau, FCC, Room 544, 1919 M Street, N.W., Washington, D.C. 20554, and to the Commission's contractor for public service records duplication: ITS, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Copies of the petition can be obtained from ITS at (202) 857-3800.

We will treat this proceeding as non-restricted for purposes of the Commission's *ex parte* rules. *See generally* 47 C.F.R. §§ 1.1200-1.1216. For further information contact Peggy Reitzel, Policy and Program Planning Division of the Common Carrier Bureau, at (202) 418-1579.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 95-63

In the Matter of

Amendment of Section 73.202(b), RM-8617
Table of Allotments,
FM Broadcast Stations.
(Rushville, Illinois)

NOTICE OF PROPOSED RULE MAKING

Adopted: May 8, 1995; **Released: May 15, 1995**

By the Chief, Allocations Branch:

Comment Date: July 6, 1995
Reply Comment Date: July 21, 1995

1. The Commission has before it the petition for rule making filed by Larry K. and Cathy M. Price ("petitioners"), licensee of Station WKXQ(FM), Channel 244A, Rushville, Illinois, proposing the substitution of Channel 223A for Channel 244A at Rushville, and the modification of their license to specify operation on Channel 223A. Petitioner states its intention to apply for the channel, if allotted.[1]

2. In support of their proposal, petitioners state that the channel substitution will reduce co-channel interference and terrain shielding. Petitioner notes that Station WKXQ(FM) is short-spaced by 7.7 kilometers to Station WCVS(FM), Channel 244A, Virden, Illinois. This situation is due to the revision of the spacing table created in MM Docket No. 88-375, which increased the minimum co-channel Class A spacing from 105 to 115 kilometers. *See Second Report and Order*, MM Docket No. 88-375, *Amendment of Part 73 of the Rules to provide for an additional FM station class (Class C3) and to increase the maximum transmitting power for Class A FM stations*, 4 FCC Rcd 6375 (1989). Although, Stations WKXQ(FM) and WCVS(FM) have entered into an agreement in which each station has agreed to allow the other to increase power to 6 kilowatts, pursuant to the provisions of 47 CFR, Sec. 73.213(c)(2). This proposal would eliminate the co-channel interference, and the short-spacing between the stations. In addition, it will also reduce terrain shielding to Station WKXQ(FM).

3. We believe the public interest would be served by proposing the substitution of Channel 223A for Channel 244A at Rushville, Illinois, since it would enable Station WKXQ(FM) to provide improved FM service to that community. An engineering analysis has determined that Channel 223A can be allotted to Rushville, Illinois, in compliance with the Commission's minimum distance separation requirements at petitioner's licensed site with a site restriction of 8.3 kilometers (5.1 miles) northwest[2] of the community.

4. As requested, we also propose to modify petitioner's license for Station WKXQ(FM) to specify operation on Channel 223A. We will not accept competing expressions of interest for the use of Channel 223A at Rushville because the procedures outlined in *Modification of FM and TV Licenses*, 98 FCC 2d 916 (1984) and Section 1.420(g) of the Commission's Rules do not apply in this case since no upgrade in facilities is contemplated.

5. Accordingly, we will seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Rushville, Illinois	244A	223A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **July 6, 1995**, and reply comments on or before **July 21, 1995**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Larry K. and Cathy M. Price
WKXQ Radio
P.O. Box 196
123 North Liberty Street
Rushville, Illinois 62681
(Petitioners)

[1] Although the petitioner's request was signed, it failed to include an affidavit verifying that the statements contained in the petition were accurate to the best of its knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.401(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. *See* also *Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3911, 3919 n.41 (1990). The petitioner is requested to rectify this omission in its comments.

[2] The coordinates for Channel 223A at Rushville are North Latitude 40-08-20 and West Longitude 90-39-26.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 95-66

In the Matter of

Amendment of Section 73.202(b) RM-8625
Table of Allotments,
FM Broadcast Stations.
(Dayton, Washington)

NOTICE OF PROPOSED RULE MAKING

Adopted: May 5, 1995; Released: May 15, 1995

Comment Date: July 6, 1995
Reply Comment Date: July 21, 1995

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Steven C. Hoffman ("petitioner"), proposing the allotment of Channel 272A at Dayton, Washington, as the community's second local FM transmission service. Petitioner states its intention to apply for the channel, if allotted.[1]

2. We believe the public interest would be served by proposing the allotment of Channel 272A at Dayton, Washington, since it could provide the community with an additional local FM service. An engineering analysis has determined that Channel 272A can be allotted to Dayton in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.0 miles (1.9 miles) southwest to avoid short-spacings to the construction permit site for Channel 273C3 at Colfax, Washington, and Station KORD(FM), Channel 274C, Richland, Washington.[2] Since Dayton is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested.

3. Accordingly, we will seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Dayton, Washington	223C1	223C1, 272A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **July 6, 1995**, and reply comments on or before **July 21, 1995**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Steven C. Hoffman
1420 S. 2nd Street
Dayton, Washington 99328
(Petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. How-

[1] Although the petitioner's request was signed, it failed to include an affidavit verifying that the statements contained in the petition were accurate to the best of its knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.401(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. *See also Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3911, 3919 n.41 (1990). The petitioner is requested to rectify this omission in its comments.

[2] The coordinates for Channel 272A at Dayton are North Latitude 46-17-57 and West Longitude 117-59-52. We note that the coordinates for Channel 272A at Dayton are short-spaced to the proposed site for Channel 270C3 at Waitsburg, Washington. However, on March 2, 1995, the petitioner in that proceeding filed a request to withdraw his proposal. Accordingly, the petition will be dismissed in the resolution of that proceeding. *See* 8 FCC Rcd 4468 (1993).

ever, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 95-64

In the Matter of

Amendment of Section 73.202(b), RM-8618
Table of Allotments,
FM Broadcast Stations.
(Talking Rock, Georgia)

NOTICE OF PROPOSED RULE MAKING

Adopted: May 8, 1995; Released: May 15, 1995

By the Chief, Allocations Branch:

Comment Date: July 6, 1995
Reply Comment Date: July 21, 1995

1. The Commission has before it a petition for rule making filed by Funseeker's Network, Inc. ("petitioner"), proposing the allotment of Channel 261A to Talking Rock, Georgia, as that community's first local transmission service. Petitioner states his intention to apply for the channel, if allotted.

2. We believe the public interest would be served by proposing the allotment of Channel 261A to Talking Rock, Georgia, since it could provide the community with its first local transmission service. An engineering analysis has determined that Channel 261A can be allotted to Talking Rock in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.6 kilometers (8.5 miles) north,[1] in order to avoid a short spacing to the licensed sites of Station WNNX(FM), Channel 259C, Atlanta, Georgia, and Station WUSY(FM), Channel 264C, Cleveland, Tennessee.

3. The Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Talking Rock, Georgia	–	261A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **July 6, 1995**, and reply comments on or before **July 21, 1995**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

M. Scott Johnson
Lauren S. Drake
Gardner, Carton & Douglas
1301 K Street, N.W.
Suite 900, East Tower
Washington, D.C. 20005
(Attorneys for Petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] The coordinates for Channel 261A at Talking Rock, Georgia are North Latitude 34-37-54 and West Longitude 84-31-24.

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

First Auction of Interactive
Video and Data Service
(IVDS) Licenses

Request for Waiver of
Applications Deadline

ORDER

Adopted: May 10, 1995; Released: May 16, 1995

By the Chief, Wireless Telecommunications Bureau:

1. On July 28 and 29, 1994, the Commission held an auction to award 594 radio licenses for the Interactive Video and Data Service (IVDS). In order to participate in the auction, applicants were required to submit an FCC Form 175 application ("short-form application") no later than June 27, 1994. On the short-form application, applicants are required to identify the markets and frequency segments for which they are applying, make certain certifications, and identify persons authorized to bid on their behalf.[1] Interactive Capital Group ("Petitioner") filed its short-form application late, and was subsequently permitted to participate in the auction conditionally.[2] Petitioner won four IVDS licenses in the auction. Petitioner requests that the Commission waive the short-form application filing deadline to permit it to purchase the licenses won at auction.[3] As noted below, petitioner argues that it lost crucial filing time because the application filing location was poorly marked and the airport personnel with whom Petitioner spoke were not familiar with the location. We deny the waiver request.

2. The IVDS short-form applications, which did not require an application fee, were submitted directly to the Commission's auction contractor, Tradewinds International, Inc. (Tradewinds). On and before the deadline date of June 27, 1994, Tradewinds accepted and time-stamped the short-form applications as they arrived at its office.[4] Petitioner's application was not submitted by the filing deadline of 5:30 p.m. Its application was hand stamped by Tradewinds at 5:33 p.m.

3. Petitioner's application was hand delivered to Tradewinds by Petitioner's law firm on June 27th. The individual who travelled to Tradewinds states in a filed declaration[5] that he found it difficult to find the filing location "due to the lack of signs and lack of knowledge on the part of airport personnel."[6] Petitioner's application and post-auction filings would otherwise permit it to purchase the four licenses it won at auction.

4. As we have stated by Public Notice, to be granted a waiver of a Commission application filing deadline, an applicant must demonstrate "unusual or compelling" circumstances in support of its request:

> This standard will generally contemplate a showing that the untimely filing was caused by a calamity of a widespread nature that even the best of planning could not have avoided. ... The Commission [considers] clearly unforeseeable circumstances as grounds for waiver -- such as a debilitating earthquake or a city-wide power outage which brings transportation to a halt. The Commission [does not] consider as unusual or compelling, however, requests for waiver based upon claims that copying machines, delivery services or even, in most cases, inclement weather or illness, was responsible for the tardy filing. Although these circumstances may be unexpected, they are reasonably foreseeable and therefore applicants should allow enough time to meet cutoff deadlines to account for such unanticipated delays.[7]

This strict standard is necessary to ensure that applicants are treated fairly and equally; in addition, a strict standard permits the Commission, at a specific time, to begin processing a given, defined group of applications without the specter of facing numerous waiver requests.[8]

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[1] Public Notice, "Notice and Filing Requirements for the First Auction of Interactive Video and Data Service Licenses," Report No. ABC-94-02, Auction No. 2, released May 23, 1994, 59 Fed. Reg. 28100 (May 31, 1994); *see generally Fourth Report and Order* in PP Docket No. 93-253, 9 FCC Rcd 2330, 2333 ¶ ¶ 20-21 (1994). The short-form applications demonstrate for the Commission, among other things, whether mutually exclusive applications exist for a given license, which is a statutory requirement for holding a contemplated auction. *See generally Second Report and Order* in PP Docket No. 93-253, 9 FCC Rcd 2348, 2350-52 ¶ 11-19 (1994) (establishing general rules and procedures governing radio spectrum auctions).

[2] *See* Public Notice, "472 Applicants to Bid on Approximately 600 Interactive Video and Data Service (IVDS) Licenses," Mimeo No. 43988, released July 20, 1994. The Public Notice stated, "Applicants marked with a "*" were earlier found unacceptable for filing. Petitions for reconsideration or applications for review of this staff action are pending. These applications will be conditionally included in the auction pending final Commission action on the applications."

[3] Petition for Reconsideration, filed July 11, 1994. This petition includes a declaration by the individual who attempted to deliver the application on time. The petition is opposed in a letter filed by Ralph Elliot Howe on July 21, 1994, which supports strict enforcement of the deadline in this case and generally opposes the practice of conditional bidding.

[4] Applications could be mailed, sent by courier, or personally delivered, so long as received by the deadline date. The office was located at Washington National Airport, in Arlington County, Virginia, on the second floor of the General Aviation Terminal. The Tradewinds offices were listed, along with other second-floor offices, in the building directory located on the first floor of the General Aviation Terminal.

[5] *See* note 3, *supra*.

[6] Petition for Reconsideration, *supra* note 3, at Declaration at 1.

[7] Public Notice, FCC 85-534, released October 4, 1984, 58 RR 2d 1706 (1985) (setting forth, for prospective use, the standard that Commission will use to assess requests for waiver of application filing deadlines).

[8] *Id.*

5. We find that Petitioner has failed to satisfy the waiver requirements described above. Petitioner, being aware that it had not previously visited Tradewinds, should have given itself more time to find the location. While Petitioner missed the application filing deadline by just a few minutes, it has described no "unusual or compelling" circumstances to support its waiver request.[9]

6. Accordingly, IT IS ORDERED that the subject Petition for Reconsideration IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Regina M. Keeney
Chief, Wireless Telecommunications Bureau

[9] *See, e.g.*, Hearing Designation Order in MM Docket No. 88-100, 3 FCC Rcd 1677, 1677 ¶ ¶ 6-8 (Audio Serv. Div. 1988) (petition to accept late filing denied where U.S. Postal Service failed to fulfill its guarantee of "Next Day Service").

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of the Amateur Service Rules to Change Procedures for Filing an Amateur Service License Application and to Make Other Procedural Changes.

MEMORANDUM OPINION AND ORDER

Adopted: May 10, 1995; Released: May 16, 1995

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On October 17, 1994, the Wireless Telecommunications Bureau adopted an *Order* in this proceeding[1] clarifying, *inter alia*, that an amateur service license is granted when license data is entered into the Commission's licensee data base.[2] The purpose of that *Order* was to allow successful license examinees to operate amateur stations as soon as possible. A timely petition for reconsideration has been received from Mr. David Popkin. This *Memorandum Opinion and Order* denies that petition.

II. DISCUSSION

2. The petitioner states that the phrase "based on the data appearing in the Commission's amateur service license data base" that appeared in the text of the *Order* is not contained in Section 97.5(d) of the Commission's Rules, 47 C.F.R. § 97.5(d).[3] The petitioner requests that Section 97.5(d),[4] which describes a licensee's operating authority, be amended to include the phrase. Such an amendment is unnecessary. The *Order* amended several rule sections to clarify that operation is authorized when the grant of the license has occurred,[5] rather than requiring a person to have a license document in hand. We do not believe that any useful purpose will be served by adding additional language in this rule.

III. ORDERING CLAUSES

3. In view of the foregoing, and pursuant to the authority contained in Sections 1.401(e) and 1.429(a) of the Commission's Rules, 47 C.F.R. §§ 1.401(e) and 1.429(a), IT IS ORDERED that the petition for reconsideration filed by Mr. David Popkin on November 23, 1994, IS DENIED.

4. For further information, contact William T. Cross, Private Wireless Division, (202) 418-0680.

FEDERAL COMMUNICATIONS COMMISSION

Regina M. Keeney
Chief, Wireless Telecommunications Bureau

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[1] 9 FCC Rcd 6111 (1994). The *Order* was published in the Federal Register November 2, 1994. *See* 59 FR 54831 (1994).

[2] *Order* at 2-3.

[3] Petition at 1.

[4] Section 97.5(d), as revised by the *Order*, states: A person who has been granted a station license of the type listed in paragraph (b) of this section, or who holds an unexpired document of the type listed in paragraph (c) of this section, is authorized to use in accordance with the FCC Rules all transmitting apparatus under the physical control of the station licensee at points where the amateur service is regulated by the FCC.

[5] *Order* at 1.

Before the
Federal Communications Commission
Washington, D.C. 20554

CI Docket No. 95-54

In the Matter of

Amendment of Part 80 of the Commission's Rules Regarding the Inspection of Great Lakes Agreement Ships

NOTICE OF PROPOSED RULEMAKING

Adopted: April 24, 1995; Released: May 16, 1995

Comment Date: July 18, 1995
Reply Comment Date: August 17, 1995

By the Commission:

I. INTRODUCTION

1. In this Notice of Proposed Rule Making (Notice), we propose to allow owners and operators of ships subject to the annual inspection requirements of the Agreement between the United States and Canada for the Promotion of Safety on the Great Lakes by Means of Radio (Great Lakes Agreement)[1] to have the inspection performed by a private sector classification society instead of by Commission staff.[2] The proposed changes would reduce economic burdens on the public and the Commission by allowing mariners to arrange for an inspection at their convenience. Because of our concern that maritime safety on the Great Lakes not be compromised by this action, we are also proposing a joint study to be conducted with the United States Coast Guard and the Canadian Coast Guard on the effect of this proposal. Further, we are requesting specific comment on whether we should permit other designated private sector entities or persons to perform such inspections.

II. BACKGROUND

2. The Great Lakes Agreement is intended to promote safety of life and property on the Great Lakes by means of radio.[3] It dates back to 1952 and requires, among other things, that all vessels over 20 meters (65 feet), most towing vessels, and vessels carrying more than six passengers for hire be equipped with a marine VHF radiotelephone installation. The Great Lakes Agreement requires that these installations be inspected at least once each year.[4] The Great Lakes Agreement requires that the inspections be carried out by officers of the Contracting Governments or by either persons nominated for that purpose or organizations recognized by the Contracting Government.[5] In other words, the Great Lakes Agreement provides specific authority allowing the United States to entrust the annual inspection to either persons or organizations other than the Commission.[6] Presently, however, the Commission's Rules do not permit a Great Lakes Agreement inspection to be conducted by anyone other than Commission staff.[7]

3. Additionally, the Great Lakes Agreement requires that these vessels be inspected while the vessel is in active service or within one month before the date the vessel is placed in service.[8] Because almost all vessels on the Great Lakes must be taken out of service over the winter and operators do not wish to interrupt shipping schedules after the shipping season begins, there is a very busy period in the spring when these vessels are being put back in service.[9]

III. DISCUSSION

4. The Commission inspects approximately 490 vessels subject to the Great Lakes Agreement each year. Commission inspectors test the output power, frequency tolerance and availability of reserve power, and conduct an operational radio check of the radiotelephone installation during the inspection. Any failure of these critical items results in the vessel failing the annual inspection and not receiving a safety certificate until the failure is corrected. An integral part of the annual inspection is to examine the connecting transmission lines, electrical cabling and control circuitry that make up the entire radiotelephone installation to ensure that the individual components operate satisfactorily when connected together.

5. Although the inspections are relatively simple and generally take no more than an hour to complete, they are conducted to ensure that Great Lakes Agreement ships

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[1] Agreement Between Canada and the United States for the Promotion of Safety on the Great Lakes by Means of Radio, T.I.A.S. 7837, amended T.I.A.S. 9352 (Great Lakes Agreement).

[2] Classification societies are organizations formed to, among other things, conduct ship inspections for compliance with international and domestic regulations. In the United States, the American Bureau of Shipping determines the maximum load that may be carried by U. S. vessels for compliance with load line certification. *See* 46 U.S.C. § 3316.

[3] *See* Appendix C for relevant excerpts of the Great Lakes Agreement.

[4] The Great Lakes Agreement differentiates between an inspection, which is conducted from time to time to ensure enforcement of the agreement, and a periodic survey, which must be conducted at least once every 13 months. The Commission only conducts the periodic survey (hereafter "annual inspection") on Great Lakes Agreement vessels once every 12 months and allows a one month extension of the certificate. For all practical purposes, inspections and surveys are the same. *See* Article 11, Great Lakes Agreement and section 80.953 of the Commission's Rules, 47 C.F.R. § 80.953.

[5] *Id.*

[6] *Id.*

[7] *See* Section 80.953 of the Commission's Rules, 47 C.F.R. § 80.953, which states in part, "Each U.S. flag vessel subject to the Great Lakes Agreement must have an inspection of the required radiotelephone installation not less than once every twelve months. ... A Great Lakes Radiotelephone Certificate will be issued to vessels in compliance. ..."

[8] *See* Article XII of the Great Lakes Agreement.

[9] The Commission's Saint Paul office reports that 73 per cent of the 490 inspections conducted annually are inspected in a four month period. *See* facsimile message from Albert S. Jarratt, Jr., Federal Communications Commission to George Dillon (February 23, 1995).

have a reliable means of distress communications in an emergency. We note, however, that improvements in the reliability of radiotelephone equipment and the industry practice of a preinspection examinations have resulted in an inspection failure rate for Great Lakes Agreement vessels of only one per cent.[10]

6. The majority of the inspections are done by five Commission offices: Buffalo, New York; Saint Paul, Minnesota; Chicago, Illinois; Detroit, Michigan; and Allegan, Michigan. In order to conserve resources, these offices have attempted to schedule Great Lakes Agreement inspections at specific dates and times. We are now faced with an even greater need to conserve resources and to provide more efficient and better service to our customers. We believe that one way to accomplish this is to permit owners and operators of Great Lake Agreement vessels to have their vessels inspected by the private sector, specifically a classification society, instead of by the Commission.[11]

7. The International Maritime Organization (IMO) has adopted a resolution setting forth the minimum standards for nongovernment organizations that conduct inspections on behalf of an administration, *IMO Assembly Resolution A.739(18), Appendix 1*, "Minimum Standards for Recognized Organizations Acting on Behalf of the Administration." There are more than 40 Classification societies worldwide that inspect passenger and cargo vessels for compliance with the myriad of domestic and international regulations that vessels must comply with before leaving port. Additionally, 11 classification societies are members of the International Association of Classification Societies (IACS).[12] The IACS grants membership status to classification societies that meet the IACS's Quality System Certification Scheme. The use of classification societies to conduct inspections on behalf of an administration is widespread. The United States, for example, is statutorily required to use the American Bureau of Shipping, or a similar United States classification society, to class vessels owned by the Federal Government.[13] Additionally, some of IACS' members operate in the United States.

8. We propose, therefore, to permit any United States ship subject to the Great Lakes Agreement to arrange for an inspection of the radiotelephone installation by a classification society that is a member of the IACS, such as the American Bureau of Shipping. We further propose that the classification society issue a radiotelephony certificate on behalf of the Commission to the ship upon successful completion of the inspection. Because the Commission is ultimately responsible for guaranteeing that an inspection meets the requirements of the Great Lakes Agreement inspection we request specific comment on the following questions related to this proposal.

i. Should the Commission permit such inspections by persons or organizations other than classification societies?

ii. Should the Commission require membership in the IACS as a minimum requirement?

iii. What, if any, oversight should the Commission exercise over inspections? For example, should we conduct:

(1). Random inspections,

(2). Follow-up inspections.

iv. Should we require that Great Lakes Agreement inspections be conducted by the private sector and not give owners or operators the option of requesting a Commission inspection?

v. What will the costs and benefits to the maritime industry be if the Commission requires that Great Lakes Agreement inspections be conducted only by the private sector?

vi. What will the cost and benefits to the maritime industry be if the Commission permits Great Lakes Agreement inspections to be conducted by the private sector as an alternative to a Commission inspection?

9. We are concerned that any change to existing ship inspection procedures not decrease safety. We propose, therefore to conduct a study prior to making a final determination in this matter in cooperation with the United States Coast Guard and the Canadian Coast Guard on the effect of using private sector inspectors to make Great Lakes Agreement inspections. We will use the results of that study and the comments we receive in this proceeding to determine any future action.

10. We believe in the principle that government should be responsive to user needs and began this proceeding to promote flexibility, remove unnecessary and inimical regulations and, most importantly, provide better service to the public. In a companion Notice of Inquiry, we are requesting comments on how inspections of large cargo vessels and small passenger vessels can be streamlined to better serve the public and to make government operations more efficient.[14] We are proposing a significant change to the current rules and procedures regarding safety inspections and request comment on these proposals.

IV. CONCLUSION

11. For these reasons, we are proposing to amend the Rules to permit the use of classification societies to conduct inspections of radiotelephone installation of Great Lakes Agreement vessels on behalf of the Commission and to issue certificates to such vessels. Under our proposal ships would be inspected by a classification society, such as the American Bureau of Shipping, and the classification

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[10] The Chicago field office reports that in the past 5 years only 25 Great Lakes Agreement vessels have failed the annual inspection. E-mail dated February 17, 1995, from Williford Gray, Chicago field office.

[11] Generally, the Commission must conduct inspections of ship radio stations required by the Communications Act to carry radio equipment. *See* Sections 362 and 385 of the Communications Act, 47 U.S.C. §§ 360, 385.

[12] *See* Appendix D for a list.

[13] Classing a vessel means, among other things, determining the maximum load that may be carried. The American Bureau of Shipping, or any other american classification society, is required by law to make such measurements on U. S. vessels. *See* 46 U.S.C. § 3316.

[14] *See* Notice of Inquiry, CI Docket No. _____, ___ FCC Rcd _____.

society would issue the certificate. We are also proposing to increase the annual inspection interval to 13 months to conform our Rules to the Great Lakes Agreement.

V. PROCEDURAL MATTERS

INITIAL REGULATORY FLEXIBILITY ANALYSIS

12. An Initial Regulatory Flexibility Analysis is contained in Appendix A to this Notice.

13. Accordingly, we adopt this Notice under the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r). Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. Sections 1.415 and 1.419, interested persons may file comments on or before **July 18, 1995** and may file reply comments on or before **August 17, 1995**. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you should file an original and nine copies. You should send your comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Reference Center of the Federal Communications Commission (Room 239), 1919 M Street, N.W., Washington, D.C. 20554.

14. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. *See generally* 47 C.F.R. §§ 1.1202, 1.1203, and 1.206(a).

15. For further information, contact George R. Dillon, Compliance and Information Bureau, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554; telephone 202-418-1100.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Attachments

APPENDIX A

INITIAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals contained in this Notice. We request written public comment on the IRFA, which follows. Comments must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines provided in paragraph 13, *supra*. The Secretary shall send a copy of this Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. §§ 601-612 (1981).

A. Reason for Action

2. The Commission proposes to permit ships subject to the Great Lakes Agreement to have the annual inspection conducted by a classification society.

B. Objectives

3. We seek to promote efficiency in the Commission's service to the public and to encourage the use of private sector organizations to take over government operations wherever possible.

C. Legal Basis

4. The proposed action is authorized under Sections 4(i) and 303(r) of the Communications Act, 47 U.S.C. §§ 154(i) and 303(r), and the Great Lakes Agreement, Article XII.

D. Reporting, Recordkeeping and Other Compliance Requirements

5. Our proposed amendment to 47 C.F.R. § 80.953 would permit owners and operators of vessels subject to the Great Lakes Agreement to use a classification society to meet a current annual inspection requirement.

E. Federal Rules Which Overlap, Duplicate or Conflict with These Rules

6. None.

F. Description, Potential Impact, and Small Entities Involved

7. Use of private sector classification societies to inspect Great Lakes Agreement vessels would allow better service to the owners and operators of such vessels, many of which are small businesses, and more efficient use of scarce government resources. It would additionally encourage the creation of jobs to inspect approximately 490 vessels each year.

G. Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives

8. None.

APPENDIX B

PROPOSED RULES

Chapter I of Title 47 of the Code of Federal Regulations, Parts 0 and 80 are proposed to be amended as follows:

PART 0--COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.311 is amended by revising paragraph (f) to read as follows:

COMPLIANCE AND INFORMATION BUREAU

§ 0.311 Authority delegated.

* * * * *

(f) The Chief of the Compliance and Information Bureau is authorized to rely on reports, documents and certificates issued by the American Bureau of Shipping or any other classification society that is a member of the International Association of Classification Societies to conduct radio inspections of vessels and to issue certificates in accordance with Regulations 11, 12 and 13 of the Great Lakes Agreement. The Chief, Compliance and Information Bureau is further authorized to delegate this authority.

* * * * *

Part 80 - Stations in the Maritime Services

3. The authority citation for Part 80 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

4. Section 80.5 is amended by adding in alphabetical order the following definitions:

§ 80.5 Definitions.

* * * * *

Classification society. A non-profit organization formed to conduct vessel inspections that is affiliated or associated with a particular administration.

* * * *International Association of Classification Societies (IACS).* An association representing classification societies.

* * * * *

5. Section 80.59 is amended by revising the section heading, paragraphs (a) and (a)(1), removing paragraph (a)(2), redesignating paragraph (b) as (a)(2), and adding a new paragraph (b) to read as follows:

§ 80.59 Compulsory ship inspections.

(a) *Application for inspection and certification by the FCC.* An application for inspection and certification, and documentation that the appropriate inspection fees have been paid, must be submitted to the FCC field office serving the port where the ship is to be inspected at least three days before the proposed inspection date.

(1) FCC Form 801 must be used to apply for a ship radio inspection on board ships subject to Part II or Part III of Title III of the Communications Act or the Safety Convention. Applications for Great Lakes Agreement inspections must state the reason why a classification society could not inspect the vessel.

* * * * *

(b) *Application for inspection and certification by a classification society.* An inspection of a ship radio station and certification of a ship subject to the Great Lakes Agreement may be made by a classification society that is a member of the IACS or by the FCC.

* * * * *

6. Section 80.953 amended by redesignating the text as paragraph (a), revising its first sentence and removing its second sentence and adding a new paragraph (b) to read as follows:

§ 80.953 Inspection and certification.

(a) Each U. S. flag vessel subject to the Great Lakes Agreement must have an inspection of the required radiotelephone installation at least once every 13 months.

* * *

(b) This inspection may be conducted by the FCC or by a classification society that is a member of the International Association of Classification Societies (IACS). A certificate issued by a classification society has the same standing as one issued by the FCC.

APPENDIX C

GREAT LAKES AGREEMENT EXCERPTS

The treaty is titled:

TELECOMMUNICATIONS

Promotion of Safety on the Great Lakes by Means of Radio

Agreement Between the UNITED STATES OF AMERICA and CANADA

Specifically, ARTICLE XII reads:

Annual Inspections and Surveys

1. So far as concerns the enforcement of this Agreement, the radiotelephone stations of all vessels subject to the provisions of this Agreement and the Technical Regulations shall be subject to inspection from time to time. In addition, vessels subject to provisions of this Agreement and to the Technical Regulations of the two countries concerned shall be subject to a periodic survey of the radiotelephone station not less than once every thirteen months. This survey shall be made while the vessel is in active service or within not more than one month before the date on which it is placed in such service.

2. The inspection and survey of radiotelephone stations shall be carried out by the officers of the Contracting Governments for their respective vessels. With respect to any vessel which belongs to any other country, such inspection shall be carried out by officers of the Contracting Governments within whose jurisdiction such vessel first enters, and thereafter by the Contracting Government having jurisdiction as determined by the location of the vessel at least at once each thirteen months or at the time of any inspection deemed necessary by such Government.

3. Each Contracting Government may entrust the inspection and surveys of the radiotelephone stations either to surveyors nominated for this purpose or to organizations

recognized by it. In every case the Contracting Government concerned fully guarantees the completeness and efficiency of the inspection and survey.

APPENDIX D

American Bureau of Shipping
Two World Trade Center
106th Floor
New York, NY 10006

Bureau Veritas
17 bis, Place des Reflelts
La Defense 2
92400 Courbevoie, France

China Classification Society
40 Dong Huang Cheng
Gen Nan Jie
Beijing 100006
China

Det Norske Veritas
Veritasveien 1
P.O. Box 300
N-1322 Hovik, Norway

Germanischer Lloyd
Vorsetzen 32
P.O. Box 11 16 06
D-2000 Hamburg 11
Germany

Korean Register of Shipping
Dae Duk Research Complex
Yusung P.O. Box 29
Daejeon, R. O. Korea

Lloyd's Register of Shipping
71 Fenchurch Street
London EC 3M 4BS
England

Nippon Kaiji Kyokai
4-7, Kioi-Cho,
Chiyoda-Ku
Tokyo 102
Japan

Polski Rejestr Statkow
Al. Gen. J. Hallersa 126
P.O. Box 445
80-958 Gdansk 50,
Poland

Registro Italiano Navale
Via Corsica 12
16128 Genova, Italy

Maritime Register of Shipping
8, Dvortsovaja Nab.
191186 St. Petersburg
Russia

Before the
Federal Communications Commission
Washington, D.C. 20554

CI Docket No. 95-55

In the Matter of

Amendment of the Commission's
Rules Concerning the Inspection
of Radio Installations on Large
Cargo and Small Passenger Ships

NOTICE OF INQUIRY

Adopted: April 24, 1995; Released: May 16, 1995

Comment Date: July 18, 1995
Reply Comment Date: August 17, 1995

By the Commission:

I. INTRODUCTION

1. In this Notice of Inquiry (Notice), we begin a proceeding to review the Commission's current Rules regarding the inspection of ships for compliance with the Communications Act of 1934 (Communications Act) and the International Convention for the Safety of Life at Sea, 1974 (Safety Convention).[1] We seek information that will allow us to streamline ship inspection procedures for the maritime services, remove unnecessary rules, improve service to the maritime community, and, above all else, preserve maritime safety. This Notice is a companion item to our proposal to allow vessel operators on the Great Lakes subject to the annual inspection requirements of the Agreement between the United States and Canada for the Promotion of Safety on the Great Lakes by Means of Radio (Great Lakes Agreement)[2] to have the inspection performed by a classification society instead of by Commission staff.[3]

2. The Commission has proposed two marine related amendments to the Communications Act. The first amendment allows early implementation of the Global Maritime Distress and Safety System (GMDSS). The second proposal will permit changes to the way we inspect large cargo vessels[4] and small passenger vessels.[5] This Notice is the initial step to develop and implement an overall strategy to improve the manner in which we conduct inspections without derogating the safety of life at sea.

II. BACKGROUND

3. The maritime community has pioneered the use of radio for safety purposes.[6] The classic example is the sinking of the Titanic in 1912 which ultimately lead to the adoption of the first International Convention for the Safety of Life at Sea, 1929 (Safety Convention)[7] and to the present requirements in the Communications Act for some U. S. ships, "compulsory ships," to carry a manual Morse code radiotelegraph installation.[8] Although there have been many changes in maritime communications and operating practices, the general procedure that Commission inspectors use to test manual Morse code equipment remains largely the same as it was in 1934.

4. In 1988, the Safety Convention was amended to incorporate the equipment and principles of the GMDSS.[9] The amendments incorporated advanced automated terrestrial data systems, as well as satellite communications systems, and changed the distress alerting system from primarily ship-to-ship, to primarily ship-to-shore.[10] The GMDSS amendments entered into effect in 1992 and are to be phased in with full implementation in 1999.[11]

5. The Communications Act requires that the Commission must inspect the radio installation of large cargo ships and certain passenger ships of the United States at least once a year to ensure that the radio installation is in compliance with requirements of the Communications Act.[12] Additionally, the Communications Act requires that the Commission must inspect the radio installation of small passenger vessels as necessary to insure compliance

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[1] *See* Regulation 7 and 9 of the Safety Convention, 32 U.S.T. 47, T.I.A.S. 9700, and Sections 362 and 385 of the Communications Act, 47 U.S.C. §§ 360, 385.

[2] Agreement Between Canada and the United States for the Promotion of Safety on the Great Lakes by Means of Radio, T.I.A.S. 7837, amended T.I.A.S. 9352.

[3] *See* Notice of Proposed Rule Making, CI Docket No. _____, FCC Rcd _____.

[4] All cargo vessels over 300 gross tons and all passenger vessels that carry more than 12 passengers on an international voyage are required to carry a radio installation. *See* Regulation 1, Chapter IV, Safety Convention.

[5] The Communications Act exempts small passenger vessels operated on domestic voyages from certain of the radio equipment carriage requirements. There are, generally, no large U.S. passenger vessels operated on international voyages. *See* Section 352(b)(3) of the Communications Act, 47 U.S.C. § 352(b)(3), and, Sections 382-386 of the Communications Act, 47 U.S.C. §§ 382,386.

[6] In 1906 the first international radiotelegraphy conference was held. Four years later, the Wireless Ship Act of 1910 was adopted giving the Secretary of Commerce and Labor the power to make regulations to require wireless equipment on passenger vessels. Pub. L. No. 262, 36 Stat. 629 (1910).

[7] Current 1974 Convention, entered into force May 25, 1980, 32 U.S.T. 47, T.I.A.S. 9700, superseded 1960 and 1948 Conventions.

[8] *See* Sections 351-364 of the Communications Act, 47 U.S.C. §§ 351-362, for a description of compulsory equipment.

[9] See Final Acts of the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974, on the Global Maritime Distress and Safety System , adopted November 9, 1988.

[10] For further information, see Notice of Proposed Rule Making, PR Docket 90-480, Sections III and IV, 7 FCC Rcd 6212-6213 (1992).

[11] On February 1, 1995, the most recent waypoint for the GMDSS amendments, all newly constructed ships are required to install equipment that meets the requirements of the Safety Convention. Until the Communications Act is amended, United States ships constructed after this date are required to install both a manual Morse code installation and the GMDSS equipment. *See* Section 351 of the Communications Act, 47 U.S.C. § 351, and Regulation 1, Chapter IV of the Safety Convention.

[12] 47 U.S.C. § 360(b).

with the radio installation requirements of the Communications Act. Currently, the Commission inspects small passenger ships once every five years.[13]

6. The Commission inspects approximately 580 large cargo ships subject to the Communications Act or the Safety Convention each year and approximately 600 small passenger vessels that are subject only to the Communications Act.[14] Together with the Great Lakes Agreement vessels, the Commission inspects approximately 1600 ships a year.[15] Currently, inspectors in port offices of the Commission's Compliance and Information Bureau (CIB) inspect all U.S. ships that request an inspection. Because of the requirement that inspections have to be conducted *by the Commission*, CIB has hired part-time ship inspectors in remote areas such as Guam. CIB estimates the total annual personnel required to inspect all ships, including Great Lakes Agreement vessels, to be 15.5 full time employees.[16]

7. The International Convention for the Safety of Life at Sea, 1974 (Safety Convention) to which the United States is signatory and which applies to large cargo ships and certain passenger vessels, also requires an annual inspection. The Safety Convention, however, permits an Administration to *entrust the inspections to either surveyors nominated for the purpose or to organizations recognized by it.*[17] The Commission has recommended that the Communications Act be amended to permit the use of an entity designated by the Commission to conduct ship inspections.[18] Such a statutory change would permit better service to ships located in remote areas or in ports where there is not a Commission office and would bring the Communications Act into conformance with the Safety Convention.

8. Amending the Communications Act will eliminate our unnecessary requirement that only Commission employees conduct radio inspections, free resources currently used to inspect ship radio stations and bring the flexibility of using the American Bureau of Shipping (ABS) or other classification societies to conduct ship radio inspections. Currently, because of budget concerns the Commission can schedule inspections in remote areas or at ports where there is no Commission office only infrequently. While this statutory proposal is pending, we are initiating this Notice to explore methods of streamlining the ship inspection program within the provisions of the current statute.

III. DISCUSSION

9. Commission inspectors currently conduct a thorough inspection of all of a ship's required radio equipment, from simple VHF marine transmitters to complex satellite transmitting and receiving equipment. Inspectors are primarily responsible for ensuring that the radio transmitting and receiving equipment provides safety communications capability at the time of inspection. It is the ship operator's responsibility to ensure that the vessel is capable of providing safety communications at all other times.[19] The Commission recognizes the importance of ensuring safety of life and property at sea. In 1990, we incorporated the GMDSS amendments to the Safety Convention in Part 80 of our Rules, 47 C.F.R. Part 80, to implement an internationally approved safety system.[20] We have worked in conjunction with the United States Coast Guard on a recommendation to Congress that the United States amend the Communications Act to incorporate the GMDSS to replace the outdated manual Morse code radiotelegraph requirements.

10. We are conducting an inquiry into whether the policies and procedures that the Commission uses to inspect and verify that a radio installation on a U. S. vessel is properly installed and functions as intended during a distress can be simplified and streamlined. For example, an inspection of a large cargo vessel can take up to 6 hours, not including travel time, and is often highly complex. Commission inspectors note anecdotally, however, that the ship's captain often reports that the only time that one component, the medium frequency radiotelegraph installation, is used is during the annual FCC inspection.[21]

11. Although the inspections the Commission currently conducts for large cargo vessels are complex, the inspections required in the GMDSS may not be quite as complicated because much of the equipment will incorporate self-test features. Further, many of the inspections the Commission conducts for small passenger vessels are relatively simple and generally take no more than an hour to complete. All of the inspections are conducted to ensure that ships have a reliable means of distress communications in an emergency.[22]

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[13] 47 U.S.C. § 385, 47 C.F.R. § 80.903.

[14] A ship is a passenger vessel if it carries more than 12 passengers and navigates on voyages in the open sea. A cargo vessel is any vessel that is not a passenger vessel. *See* Section 3(w) of the Communications Act, 47 U.S.C. § 153(w).

[15] In a companion item the Commission is proposing to use private sector inspectors for the Great Lakes Agreement vessels it inspects. *See* Notice of Proposed Rule Making, CI Docket No. 95-55, FCC Rcd _____.

[16] FOB Enforcement Division Plan for fiscal year 1995.

[17] The inspection and survey of ships, so far as regards the enforcement of the provisions of the present Regulations and the granting of exemptions there-from, shall be carried out by officers of the country may entrust the inspection and survey either to surveyors nominated for the purpose or to organizations recognized by it. Regulation 6(a), Chapter I, Safety Convention.

[18] For example, a classification society such as the American Bureau of Shipping (ABS). Classification societies are, generally, nongovernment organizations that conduct inspections on behalf of an administration. There are more than 40 Classification societies worldwide that inspect passenger and cargo vessels for compliance with the myriad of domestic and international regulations that vessels must comply with before leaving port. ABS presently conducts hull inspections on U.S. ships for the United States Coast Guard. Additionally, ABS conducts Safety Convention radio inspections for many Administrations.

[19] *See* generally, Section 351 of the Communications Act, 47 U.S.C. § 351, and Regulation 11, Chapter I of the Safety Convention.

[20] *See* Report and Order, PR Docket No. 90-480, 7 FCC Rcd 951 (1992).

[21] The manual Morse code medium frequency radiotelegraph installation is required by the Communications Act. Most U. S. ships, however, are additionally equipped with satellite equipment, high frequency radiotelephone installations, automated radiotelegraph equipment or a combination of all.

[22] Commission inspectors test the output power, frequency tolerance, availability of reserve power and conduct an operational radio check of the radiotelephone installation during the inspection. Any failure of these critical items results in the vessel failing the inspection and not receiving a safety certificate until the failure is corrected.

A. Inquiry.

Present inspection process.

12. The Commission is faced with a mandate to conserve resources and to provide more efficient and better service to our customers. We believe that one way to accomplish this is to improve the efficiency of our inspection process. The Commission's Compliance and Information Bureau (CIB) has started an initiative to reduce the inspection time spent on large cargo vessels from an average of 6 hours to an average of 3 hours.[23] We believe that we can accomplish this with no reduction in safety. For example, the Communications Act requires ships to carry a medium frequency direction-finder (DF) for navigation and location purposes. All U. S. ships carry either LORAN-C or, more commonly, Global Positioning System (GPS) receivers that are far superior to a direction-finder. Further, the United States Coast Guard intends to discontinue transmitting beacon signals in the medium frequency band that are used by the DF. We intend only to verify that the DF is installed and operational during our inspection and we will not fail a ship, if it is not operational.

13. We are requesting specific comments and suggestions on how we can improve the efficiency of our inspection process. Commenters are not limited to the following questions which are intended primarily to elicit comments. The Commission will consider fully all suggested inspection programs.

i. Should the Commission use off-air measurements to verify that a required radio installation is operable prior to inspecting the vessel?

ii. When a ship is equipped with satellite and automated digital data transmitters, is it necessary to conduct an exhaustive test of the manual Morse code installation?

iii. Would it be beneficial for the Commission to publish a check list of what we are going to examine at an inspection?

iv. Should we have the ship's master or captain certify that the radio installation is operational and perform only a spot check of the equipment?

Future inspection plans.

14. *GMDSS inspections.* The Commission has recommended that the Communications Act be amended to incorporate the GMDSS and to remove the requirement that large cargo ships and passenger ships carry a manual Morse code radiotelegraph installation.[24] Small passenger ships are exempted from the requirement to carry a Morse code installation because of their small size and limited routes of operation.[25] The GMDSS, the result of over 10 years work by the world's maritime nations, is an automated ship-to-shore distress alerting system that relies on satellite and advanced digital terrestrial systems. Inspections of GMDSS equipment will be very different than inspections of medium frequency manual radiotelegraph systems.

15. In addition to our review of how to conduct mandatory ship inspections more efficiently, we are also initiating an examination of how to inspect GMDSS ships more efficiently.[26] We are considering several approaches and request specific comments on the following topics and solicit suggestions on approaches that we may not have considered.[27]

i. Is there a need to measure frequency tolerance, modulation, and output power for GMDSS equipment?

ii. Can we use over-the-air measurements in lieu of measurements made at the ship?

iii. Should inspectors rely on the self-test features of GMDSS equipment, when it is provided?

Private sector inspections.

16. The Commission also recommended that the Communications Act be amended to permit the Commission to use private sector inspectors, prospectively classification societies, to inspect large cargo vessels and small passenger ships.[28] The Safety Convention requires an annual inspection of the radio installation but permits administrations to use either inspectors designated for the purpose of conducting inspections or organizations or persons recognized by it.[29] Additionally, the Communications Act authorizes the Commission to use other government agencies to conduct inspections on its behalf in territories and remote locations.[30] We note that many administrations use classification societies to conduct safety inspections of all types and we believe that the use of a classification society can guarantee safety.

17. The Commission is responsible for inspecting U. S. ships or ensuring that all inspections are sufficient for compliance with the requirements of the Safety Convention. We are, thus, concerned about maritime safety and are requesting specific comments regarding the use of the private sector to conduct inspections on behalf of the Commission if the Communications Act is amended to permit the use of a private sector entity.

i. Should we only permit the use of a classification society to conduct inspections?

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[23] *See* memo from Ship Committee chairman to all Ship Committee representatives (December 1994).

[24] There are no U. S. passenger ships that are required to carry Morse code equipment.

[25] *See* section 352(b)(3) of the Communications Act, 47 U.S.C. 352(b)(3).

[26] Because many of the ships the Commission inspects are equipped with satellite and digital data systems and operating under coastwise, domestic exemptions authorized by section 80.836(c) of the Commission's Rules, 47 C.F.R. § 80.836(c), Commission inspectors are familiar with most of the equipment used in the GMDSS.

[27] As we discuss in more detail later, the Commission may permit these inspections to be conducted by private sector entities. Nonetheless, we believe that compiling a public record of inspection techniques and requirements is worthwhile.

[28] *See* ¶ 7, Notice of Proposed Rule Making, CI Docket No. 95-55, ___ FCC Rcd _____(1995), for more information.

[29] Id.

[30] The Commission's New York field office, in cooperation with the Wireless Telecommunications Bureau, has authorized the Navy to conduct inspections in Diego Garcia, an archipelago in the Indian Ocean. See section 329 of the Communications Act, 47 U.S.C. 329.

ii. What criteria, if any, should we use to authorize a private sector entity to inspect ships on behalf of the Commission?

iii. Should the Commission be involved in an oversight role in the inspection process?

iv. Should we conduct random inspections?

v. To what extent, if any, will privatization affect safety?

vi. Anecdotally, large shipping companies have indicated that the cost of an FCC inspection is trivial compared to the cost of operating a large cargo ship. Most small passenger vessels are, however, owned and operated by small businesses. What are the economic benefits or costs that will affect these small businesses if we privatize ship inspections? For example, do we limit the amount that can be charged for an inspection to the amount that the Commission charges? What are the costs associated with delays in obtaining an inspection?

IV. CONCLUSION

18. We believe in the principle that government should be responsive to user needs and began this proceeding to promote flexibility, to improve our inspection process by removing unnecessary and inimical policies and, most importantly, provide better service to the public. In summary, we believe that it is both necessary and timely to commence a thorough review of the policies, rules and procedures that the Commission uses to regulate the inspection of compulsorily equipped ships. The primary purpose of this Notice is to compile a complete record that will 1) allow us to improve current inspection processes, 2) develop a technically sufficient regulatory environment for the inspection of ships subject to the GMDSS, and 3) provide an overall strategy on how to best utilize private sector entities to inspect compulsory ship stations.

V. PROCEDURAL MATTERS

INITIAL REGULATORY FLEXIBILITY ANALYSIS

19. An Initial Regulatory Flexibility Analysis is not required.

20. Accordingly, we adopt this Notice under the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r). Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. Sections 1.415 and 1.419, interested persons may file comments on or before **July 18, 1995** and may file reply comments on or before **August 17, 1995**. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you should file an original and nine copies. You should send your comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Reference Center of the Federal Communications Commission (Room 239), 1919 M Street, N.W., Washington, D.C. 20554.

21. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. *See generally* 47 C.F.R. §§ 1.1202, 1.1203, and 1.206(a).

22. For further information, contact George R. Dillon, Compliance and Information Bureau, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554; telephone 202-418-1100.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

WT Docket No. 95-56

In the Matter of

Amendment of the Commission's Rules Concerning Low Power Radio and Automated Maritime Telecommunications System Operations in the 216-217 MHz Band — RM-7784

NOTICE OF PROPOSED RULE MAKING

Adopted: April 25, 1995; Released: May 16, 1995

Comment Date: July 18, 1995
Reply Comment Date: August 17, 1995

By the Commission:

I. INTRODUCTION

1. This *Notice of Proposed Rule Making* (*Notice*) continues our effort to provide adaptive, flexible regulations for spectrally efficient use of the 216-217 MHz band, as initiated in the *Notice of Proposed Rule Making and Notice of Inquiry* (*NOI*), released November 30, 1992.[1] By this *Notice*, we are proposing rules to permit the shared use of the 216-217 MHz band, on a secondary, non-interference basis, for a new Low Power Radio Service to include law enforcement tracking systems, auditory assistance devices for the hearing-impaired, and health care assistance devices for disabled and ill persons. Further, we are also proposing to allow Automated Maritime Telecommunications System (AMTS) coast stations to share this band on a secondary basis for point-to-point network control communications.

II. DISCUSSION

2. In 1992, the Commission reallocated one megahertz of radio spectrum from the AMTS to the Interactive Video and Data Service (IVDS).[2] This action effectively "orphaned" the 216-217 MHz band by taking away one side of the channel pair from AMTS Groups C and D.[3] In the *NOI*, we requested suggestions for new uses of this band noting that any proposed uses must not cause harmful interference to Television (TV) Channel 13. Commenters proposed several uses for the 216-217 MHz band.[4] Phonic Ear, Inc. (Phonic Ear) advocates using this one megahertz of spectrum for auditory assistance devices for persons with hearing disabilities and health care aids for ill persons.[5] PRONET, Inc. (PRONET) requests six channels in the 216-217 MHz band for electronic tracking systems, to enable law enforcement authorities to trace stolen goods by means of signals put out by miniature transmitters attached to the goods.[6] Finally, Waterway Communications Systems, Inc. (WATERCOM), an AMTS licensee, and American Commercial Barge Lines (ACBL) advocate permitting AMTS point-to-point, fixed communications for network control of AMTS stations.[7] Similarly, SEA, Inc. (SEA) proposes, in general, that the band be used for simplex data transmissions in the AMTS.[8]

3. *Phonic Ear Petition.* According to Phonic Ear, an auditory assistance system consists of a very low power, short range transmitter and special receivers that allow persons with hearing disabilities to enjoy educational or entertaining audio presentations. These devices use a single frequency to transmit an audio signal one-way at very low power. Phonic Ear claims, however, that auditory assistance devices currently operating in the 72-76 MHz band are subject to interference from co-channel high-power operations, such as wide-area paging systems. Additionally, Phonic Ear argues that permitting auditory assistance operations in the 216-217 MHz band will further the goals of the Americans with Disabilities Act of 1990 by allowing operators of privately owned facilities, *e.g.* theaters, stadiums, and lecture halls, to accommodate hearing impaired customers,[9] and will allow manufactures to reduce the size and weight of such devices, resulting in functional as well

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[1] PR Docket No. 92-257, 7 FCC Rcd 7863 (1992).

[2] *See Report and Order* in GEN Docket No. 91-2, 7 FCC Rcd 1630 (1992). *See also Memorandum Opinion and Order* in GEN Docket No. 88-372, 7 FCC Rcd 3607 (1992).

[3] The AMTS was initially allocated 80 duplex channel pairs divided into four 20-channel groups, designated as Groups A, B, C, and D. Frequencies allotted for the ship transmit side of the channel pair in Groups C and D were reallocated to IVDS in GEN Docket No. 91-2. The remaining half of the pair in Groups C and D, 216-217 MHz, is currently not being used.

[4] Comments were received from Phonic Ear, Inc. (Phonic Ear), PRONET, Inc. (PRONET), and SEA Inc. (SEA). Joint comments were filed by Waterway Communications Systems, Inc. (WATERCOM) and American Commercial Barge Lines (ACBL).

[5] *See* Phonic Ear, *Petition for Rule Making*, June 2, 1993, (Phonic Ear Petition) at i.

[6] *See* PRONET, Inc., *Request to Modify Petition for Rule Making*, RM-7784 (1993). PRONET has operated electronic tracking systems (ETS) under an experimental license since 1972. In a Petition for Rule Making, RM-7784, PRONET asked for a permanent allocation of three frequencies in the 218-219 MHz band for ETS. After the Commission allocated 218-219 MHz to the Interactive Video Data Service in the *Report and Order* in GEN Docket No. 91-2, 7 FCC Rcd 1630 (1992), PRONET amended its petition to request six channels in the 216-217 MHz band. For this reason, PRONET's modified petition will be considered in this proceeding. Additionally, PRONET submitted a pioneer's preference request associated with RM-7784, PP-23. Consistent with our review of the pioneer's preference rules in ET Docket No. 93-266, we will not address the merits of PRONET's request at this time. *See* FCC Rcd 7692 at ¶ 21 (1993).

[7] *See* WATERCOM comments at 8-9.

[8] *See* SEA comments at 11. Because SEA generally supports the use of the band by AMTS stations and no specific proposals were mentioned, we will not discuss SEA's comments as a separate issue herein.

[9] *See* the Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327 (1990) whose purpose, *inter alia*, is to provide a comprehensive national mandate for the elimination of discrimination against individuals with disabilities. *See also*

as aesthetic benefits.[10] Further, Phonic Ear promotes the use of this band for medical telemetry devices and other low power health care aids and claims that each of the low power services described above will not cause harmful interference to TV Channel 13.[11]

4. *PRONET Petition.* Under the law enforcement tracking system (LETS) proposed by PRONET, extremely small radio transmitters are attached to money and goods that are likely to be stolen. When a theft occurs, the device is activated and begins transmitting a radio signal. Radio direction finding equipment may then be used to quickly locate the stolen property. In its petition, PRONET argues that LETS will increase public safety by providing state and local law enforcement agencies with the tools to quickly apprehend criminals, thereby deterring crime.[12] Further, PRONET claims that LETS will not cause harmful interference to TV Channel 13 reception so long as the transmitters remain at least three feet from TV sets.[13]

5. *WATERCOM Comments.* AMTS stations provide automated, integrated, interconnected ship-to-shore communications similar to a cellular phone system for tugs, barges, and other marine vessels. In establishing the rules permitting AMTS stations, the Commission was concerned with the potential for interference to TV reception, particularly TV Channel 13 because of the proximity of AMTS channels and, therefore, conditioned the operation of AMTS coast stations on the requirement that no harmful interference be caused to TV reception.[14] WATERCOM and ACBL claim that point-to-point simplex use of frequencies in the 216-217 MHz band could provide network control of AMTS stations without affecting TV reception. Further, WATERCOM and ACBL suggest that the use of dedicated frequencies for controlling AMTS coast stations could increase overall system efficiency, making better quality services available to mariners.[15]

6. Based on the information provided by the commenters, we believe that the public interest would be served by permitting the low power and point-to-point operations as described above by Phonic Ear, PRONET, and WATERCOM. Further, the proposed low power and point-to-point services appear to meet the Commission's primary requirement for operation in the 216-217 MHz band – they would not cause harmful interference to TV Channel 13 operations. For example, low power auditory assistance devices and health care aids would generally operate in areas far removed from TV receivers. Similarly, low power LETS would operate intermittently, for short periods, far from TV receivers. Also, AMTS point-to-point links could be carefully designed to avoid residential areas.

7. *New Services.* In light of the substantial public benefits of these proposals, we propose to authorize shared use of the 216-217 MHz band on a secondary, non-interference basis for a new Low Power Radio Service and AMTS point-to-point operations. The proposed Low Power Radio Service would include the operation of auditory assistance devices, LETS, and radio based health care aids, while AMTS point-to-point operations would provide network control communications for AMTS coast stations. All such proposed operations, however, would be on a secondary, non-interference basis. This means that the proposed low power and AMTS services must not cause harmful interference to TV receivers within the Grade B contour[16] of any TV Channel 13 station.

8. *Technical Parameters.* There are forty, 25 kHz channels available in the 216-217 MHz band. Based on the comments and the necessity to minimize interference to TV Channel 13, we propose to allocate 30 channels (216.0125-216.7375 MHz) for a new Low Power Radio Service and 10 channels (216.7625-216.9875 MHz) for AMTS point-to-point communications. Of the 30 channels designated for low power operations, the 20 channels nearest to TV Channel 13 would be limited to 100 milliwatts transmitter output power with two of the channels (216.4625 MHz and 216.4875 MHz) set aside specifically for LETS. The remaining 10 channels would be limited to one watt transmitter output power. The low power channels, except for the two LETS channels, would be administered under a new Low Power Radio Service to be included in Subpart G of Part 95 of the Commission's Rules, 47 C.F.R. Part 95. We propose to administer the two dedicated LETS channels (216.4625 and 216.4875 MHz) under the Police Radio Service in Part 90 of the Commission's Rules, 47 C.F.R. Part 90.[17] Finally, we propose to administer the 10 AMTS channels under the provisions of Part 80 of the Commission's Rules.

9. *Licensing.* Under this proposal, authorizations in the Low Power Radio Service, including the two LETS channels administered under Part 90, would be granted based on Metropolitan Statistical Areas (MSAs) and Rural Service Areas (RSAs),[18] while each AMTS licensee would be authorized under its coast station license. Applicants would apply for authorization in the Low Power Radio Service using FCC Form 600. AMTS licensees would obtain authorization using FCC Form 503. Because all low power licensees would be sharing the 216-217 MHz band on a secondary, non-interference basis, we do not propose to place a limit on the number of authorizations per MSA and RSA or the total number of licenses a single entity may obtain. We seek specific comment on our proposed licensing scheme.

III. CONCLUSION

10. In summary, we propose to create a new Low Power Radio Service by authorizing the use of 30 channels in the 216-217 MHz band for short range, one-way auditory assistance, health care, and law enforcement tracking communications. Further, we propose to permit AMTS point-to-point communications on 10 channels in the band. Providing channels for auditory assistance and health care devices would further the goals of the Americans with Disabilities Act of 1990, improve educational opportunities

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Phonic Ear Petition at 2.

[10] By changing operating frequencies from the 72-76 MHz band to the 216-217 MHz band, manufacturers may utilize an internal antenna, rather than a cord based antenna, therefore improving the appearance of the equipment. *See* Phonic Ear Petition at 16.

[11] *See* Phonic Ear Petition at 4 and 14-16.

[12] *See* PRONET petition at 8-9.

[13] *See* PRONET petition at 4 and 21-22.

[14] *See* 47 C.F.R. § 80.215(h).

[15] *See* WATERCOM and ACBL at 8-9.

[16] The Grade B contour of a TV Channel 13 station is defined in Section 73.683 of the Commission's Rules, 47 C.F.R. § 73.683

[17] *See, e.g.,* 47 C.F.R. § 90.19.

[18] *See* 47 C.F.R. § 22.903 and FCC Public Notice, Report No. 92-40, January 24, 1992.

for persons with disabilities, and facilitate health care services. Providing channels for tracking systems for stolen goods and money would benefit law enforcement agencies and the public by reducing crime.[19] Finally, providing channels for AMTS network control will promote more efficient operations in the AMTS service, increasing marine access to state of the art communications services. Each of these proposals increases spectrum efficiency by making currently unused spectrum available to meet the needs of disabled and ill persons, law enforcement agencies, as well as mariners. We seek specific comments on the proposed rules set forth in Appendix B, and the following questions.

a) Instead of designating 30 channels for low power use, what are the advantages and disadvantages of permitting non-channelized emissions within the 216.0125 - 216.7375 MHz band? What limitations are necessary in order to permit such operation?

b) Should the proposed scope of eligibility and/or uses of the Low Power Radio Service be broadened or narrowed?

c) What are the advantages and disadvantages of permitting eligibles in the AMTS service and eligibles in the new Low Power Radio Service (Part 95 channels only) to share each others' 216-217 MHz band channels on a secondary, non-interference basis?

d) Are the proposed technical requirements for Low Power Radio Service and AMTS operations (*e.g.* power and emission limitations) consistent with protecting adjacent TV Channel 13? Should any of the proposed technical requirements be revised, added, or removed?

IV. PROCEDURAL MATTERS

INITIAL REGULATORY FLEXIBILITY ANALYSIS

11. An Initial Regulatory Flexibility Analysis is contained in Appendix A to this *Notice*.

12. Accordingly, we adopt this *Notice* under the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r). Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. Sections 1.415 and 1.419, interested persons may file comments on or before **July 18, 1995** and may file reply comments on or before **August 17, 1995**. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you should file an original and nine copies. You should send your comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

13. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. *See generally* 47 C.F.R. §§ 1.1202, 1.1203, and 1.206(a).

14. For further information, contact Roger Noel, Wireless Telecommunications Bureau, Federal Communications Commission, 2025 M Street, NW, mail stop 1700C2, Washington, DC 20554; telephone (202) 418-0680.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX A

INITIAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals contained in this *Notice*. We request written public comment on the IRFA, which follows. Comments must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines provided in paragraph 12, *supra*. The Secretary shall send a copy of this *Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603 (a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. §§ 601-612 (1981).

A. Reason for Action

2. The Commission proposes to allow low power devices to share Automated Maritime Traffic System frequencies in the 216-217 MHz band.

B. Objectives

3. We seek to make better use of currently unused portions of the spectrum while taking advantage of alternative low power technologies.

C. Legal Basis

4. The proposed action is authorized under Sections 4(i) and 303(r) of the Communications Act, 47 U.S.C. §§ 154(i) and 303(r).

[19] This is similar to the authorization of stolen vehicle recovery systems. *See In the Matter of Amendment of Parts 2 and 90 of the Commission's Rules to provide for stolen vehicle recovery systems, Report and Order*, GEN. Docket No. 88-566, 4 FCC Rcd. 7558, 7561 (1989).

D. Reporting, Recordkeeping and Other Compliance Requirements

5. Our proposed addition of 47 C.F.R. § 95.1031 would require the low power transmitters to be type accepted by the Commission.

E. Federal Rules Which Overlap, Duplicate or Conflict with These Rules

6. None.

F. Description, Potential Impact, and Small Entities Involved

7. Allowing low power devices to be licensed in the 216-217 MHz band would use the radio spectrum more efficiently, assist law enforcement organizations, and facilitate implementation of the provisions of the Americans with Disabilities Act of 1990.

G. Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives

8. None.

APPENDIX B

PROPOSED RULES

Chapter I of Title 47 of the Code of Federal Regulations, Parts 80, 90, and 95 are proposed to be amended as follows:

Part 80 - Stations in the Maritime Services

1. The authority citation for Part 80 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.385 is amended by revising the first sentence of paragraph (a)(2), inserting a new sentence after the first sentence of paragraph (a)(2), revising footnote 2, and removing the entries 216.0125 through 216.7375 and adding in their place a new footnote 3 to read as follows:

§ 80.385 Frequencies for automated systems.

* * *

(a) * * *

(2) The carrier frequency pairs listed for channels 141 through 180 for Group A and B are available for radiotelephony, facsimile and teleprinter communications. The carrier frequencies listed for channels 131 through 140 for Group C are available for point-to-point network control of AMTS coast stations. * * *

channel No.	Carrier Frequency (MHz)		Group
	Ship transmit[1]	Coast transmit[2]	
101.....	.....	.....[3].....	D
102.....	.....	.....[3].....	
103.....	.....	.....[3].....	
104.....	.....	.....[3].....	
105.....	.....	.....[3].....	
106.....	.....	.....[3].....	
107.....	.....	.....[3].....	
108.....	.....	.....[3].....	
109.....	.....	.....[3].....	
110.....	.....	.....[3].....	
110.....	.....	.....[3].....	
111.....	.....	.....[3].....	
112.....	.....	.....[3].....	
113.....	.....	.....[3].....	
114.....	.....	.....[3].....	

115.....	.....	.....[3].....	
116.....	.....	.....[3].....	
117.....	.....	.....[3].....	
118.....	.....	.....[3].....	
119.....	.....	.....[3].....	
120.....	.....	.....[3].....	
121.....	.....	.....[3].....	C
122.....	.....	.....[3].....	
123.....	.....	.....[3].....	
124.....	.....	.....[3].....	
125.....	.....	.....[3].....	
126.....	.....	.....[3].....	
127.....	.....	.....[3].....	
128.....	.....	.....[3].....	
129.....	.....	.....[3].....	
130.....	.....	.....[3].....	
* * *			

[1] Ship transmit frequenices in Group C and D are not authorized for AMTS use.
[2] The coast transmit frequencies corresponding to channels 131 through 140 for Group C are available for point-to-point network control communications by AMTS coast stations.
[3] Not currently assignable.

* * * * *

3. Section 80.477 is amended by adding a new paragraph (d) to read as follows:

§ 80.477 AMTS Points of communications.

* * * * *

(d) AMTS licensees may provide point-to-point, network control of AMTS coast stations on the frequencies provided in § 80.385.

Part 90 - Private Land Mobile Radio Services

1. The authority citation for Part 90 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303 and 332, unless otherwise noted.

2. Section 90.19 is amended by adding two new entries in numerical order to the table in paragraph (d), and adding new paragraphs (e)(32) and (f)(8) to read as follows:

§ 90.19 Police Radio Service.

* * * * *

(d) * * *

Police Radio Service Frequency Table

Frequency or band	Class of station(s)	Limitations
* * * * *		
216.4625.....	Mobile.....	32
216.4875.....	Mobile.....	32
* * * * *		

(e) * * *

(32) This frequency is available for law enforcement tracking systems in accordance with § 90.19(f)(8).

(f) * * *

(8) The frequencies 216.4625 MHz and 216.4875 MHz are available for law enforcement tracking systems (LETS) and may only be used for tracking stolen goods. Licensing of LETS under this Part is primarily limited to eligibles in the Police Radio Service. Assignments may also be made to entities who provide LETS service to eligibles in the Police Radio Service. Applications from persons or organizations other than governmental entities must be accompanied by a statement from a governmental entity having legal jurisdiction in the area to be served, supporting the request. Stations operating on these frequencies are limited to 100 milliwatts transmitter power output. Only P0N, P2D, A0N, or A2D emissions are permitted within the maximum authorized channel bandwidth of 20 kHz.

* * * * *

Part 95 - Personal Radio Services

1. The authority citation for Part 95 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

2. A new Subpart G is added to read as follows:

Subpart G Low Power Radio Service (LPRS).

GENERAL PROVISIONS

§ 95.1001 Basis and purpose.
§ 95.1003 Service areas.
§ 95.1005 License requirements.
§ 95.1007 Eligibility.
§ 95.1009 Applying for a new or modified license.
§ 95.1011 Application for a renewed license.

SYSTEM REQUIREMENTS

§ 95.1021 Station identification.
§ 95.1023 Station inspection.
§ 95.1025 Permissible communications.

TECHNICAL STANDARDS

§ 95.1031 Type acceptance.
§ 95.1033 Channels available.
§ 95.1035 Channel use policy.
§ 95.1037 Transmitter power.
§ 95.1039 Antenna height.
§ 95.1041 Emission types.
§ 95.1043 Emission standards.

Subpart G Low Power Radio Service (LPRS).

GENERAL PROVISIONS

§ 95.1001 Basis and purpose.

The rules in this subpart are intended to provide a short range, one-way communication service to assist in providing auditory assistance services to persons with disabilities and to assist in providing health care services to the ill. The frequencies may also be used to assist in recovering stolen goods.

§ 95.1003 Service areas.

Each LPRS system service area is one of the cellular system service areas as defined in 47 C.F.R. § 22.903 and FCC Public Notice, Report No. 92-40, January 24, 1992.

§ 95.1005 License requirements.

(a) Each LPRS system must be licensed in each service area in which it operates.

(b) The stations transmitting in the LPRS system service area are authorized under the system license when the antenna does not exceed 6.1 meters (20 feet) above the ground or existing man-made structure, other than an antenna structure.

(c) The term of each LPRS system license is five years.

§ 95.1007 Eligibility.

An entity is eligible to hold an LPRS system license if it is:

(a) Engaged in the operation of auditory assistance devices for persons with disabilities;

(b) Engaged in the operation of a hospital, clinic, or other medical facility regularly providing medical services;

(c) Engaged in the operation of an educational, philanthropic, or ecclesiastical activity;

(d) A state or local government entity; or,

(e) Engaged in the operation of a commercial activity providing support for law enforcement (such entities must have an agreement with the law enforcement agency responsible for the area served).

§ 95.1009 Applying for a new or modified license.

(a) An eligible entity applies for a new LPRS system license or to modify an existing LPRS system license by filing with the FCC properly completed FCC Form 600 with all required additional information attached. The form must be sent to: Federal Communications Commission, 1270 Fairfield Road, Gettysburg, PA 17325-7245.

(b) The application form must be personally signed by the applicant, if the applicant is an individual; by one of the partners, if the applicant is a partnership; or by an officer or duly authorized employee, if the applicant is a corporation.

(c) Any application not complying with the FCC's Rules may be dismissed.

§ 95.1011 Application for a renewed license.

Each application for a renewal of an LPRS system license must be submitted on FCC Form 600 or Form 405-A. The application form must be sent to: Federal Communications Commission, 1270 Fairfield Road, Gettysburg, PA 17325-245.

SYSTEM REQUIREMENTS

§ 95.1021 Station identification.

An LPRS station is not required to transmit a station identification announcement.

§ 95.1023 Station inspection.

Upon request by an authorized FCC representative, the LPRS system licensee must make all station apparatus available for inspection.

§ 95.1025 Permissible communications.

All communications must be one-way transmissions that:

(a) Provide auditory assistance services to persons with disabilities;

(b) Assist in providing health care services to the ill; or

(c) Provide stolen goods recovery services to law enforcement agencies.

TECHNICAL STANDARDS

§ 95.1031 Type acceptance.

Each transmitter used in a LPRS system must be type-accepted for use in accordance with Subpart J of Part 2 of this Chapter and included in the Commission's current Radio Equipment List.

§ 95.1033 Channels available.

(a) The following channels are authorized to stations in the LPRS which provide auditory assistance, health care, or stolen goods recover service communications:

(b) **Group 1**. The maximum transmitter output power is 100 milliwatts for stations transmitting on a channel in Group 1.

Channel No.	Center frequency (MHz)
1	216.0125
2	216.0375
3	216.0625
4	216.0875
5	216.1125
6	216.1375
7	216.1625
8	216.1875
9	216.2125
10	216.2375
11	216.2625
12	216.2875
13	216.3125
14	216.3375
15	216.3625
16	216.3875
17	216.4125
18	216.4375

(c) **Group 2**. The maximum transmitter output power is 1 watt for a stations transmitting on a channel in Group 2.

Channel No.	Center frequency (MHz)
21	216.5125
22	216.5375
23	216.5625
24	216.5875
25	216.6125
26	216.6375
27	216.6625
28	216.6875
29	216.7125
30	216.7375

(d) Each LPRS transmitter must be maintained within a frequency stability of 50 parts in 106.

§ 95.1035 Channel use policy.

(a) The channels authorized to LPRS systems by this Part of the FCC Rules are available on a shared basis only and will not be assigned for the exclusive use of any licensee.

(b) Licensees must cooperate in the selection and use of channels in order to reduce interference and make the most effective use of the authorized facilities. Licensees of systems causing harmful interference are expected to cooperate and resolve this problem by mutually satisfactory arrangements. If licensees are unable to do so, the FCC may impose restrictions including, but not limited to, specifying power, antenna height, or area or hours of operation of the stations concerned.

(c) Operation is subject to the condition that no harmful interference is caused to the reception of television stations operating on TV channel 13.

§ 95.1037 Transmitter power.

The transmitter power of each station in a LPRS system shall be limited to the minimum necessary for satisfactory communications, and must not exceed the maximum power specified for the channel group.

§ 95.1039 Antenna height.

No antenna at a station in an LPRS system shall exceed 6.1 meters (20 feet) above ground or existing manmade structure. If mounted on an existing structure, the tip of the antenna shall not exceed 30.5 meters (100 feet) above ground. In cases where interference occurs the FCC may require the licensee to reduce the height of the antenna.

§ 95.1041 Emission types.

An LPRS station may transmit any emission type appropriate for one-way communications in this service.

§ 95.1043 Emission standards.

The standard channel bandwidth is 25 kHz. A LPRS system, however, may subdivide channels and/or may combine two or more adjacent channels. Except for those described in paragraph (c) of this section, emissions shall be attenuated below the unmodulated carrier in accordance with the following:

(a) Emissions 12.5 kHz to 22.5 kHz away from the channel center frequency: at least 30 dB;

(b) Emissions more than 22.5 kHz away from the channel center frequency: at least 43 + 10log (carrier power in watts) dB.

(c) In cases where multiple adjacent channels are combined for the use of a single LPRS system, the following shall apply:

(i) Emissions 12.5 kHz to 22.5 kHz below the center frequency of the lowest numbered channel in the block: at least 30 dB;

(ii) Emissions 12.5 kHz to 22.5 kHz above the center frequency of the highest numbered channel in the block: at least 30 dB;

(iii) Emissions more than 22.5 kHz below the center frequency of the lowest numbered channel in the block: at least 43 + 10log (carrier power in watts) dB;

(iv) Emissions more than 22.5 kHz above the center frequency of the highest numbered channel in the block: at least 43 + 10log (carrier power in watts) dB;

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

Global Broadcasting Group, Inc. — File No. BMPHI-850109IF

Interim Operator, Station WNWK(FM)
Channel 290, Newark, New Jersey

Multicultural Radio Broadcasting, Inc.[1] — File No. BPH-920723IB

For modification of permanent facilities for Station WNWK(FM)
Channel 290, Newark, New Jersey

MEMORANDUM OPINION AND ORDER

Adopted: April 26, 1995; Released: May 16, 1995

By the Commission:

1. The Commission has under consideration an Application for Review filed on August 17, 1992 by Global Broadcasting Group, Inc. ("Global"), which was the interim operator of Station WNWK(FM), Newark, New Jersey ("WNWK"). Global challenges staff actions which: (1) granted the above-captioned minor modification application of Multicultural Radio Broadcasting, Inc. ("Multicultural"), permanent licensee of WNWK, *see Letter from Chief, FM Branch to Multicultural,* Ref. 1800B3-LR, dated July 30, 1992; and (2) denied Global's petition for reconsideration of the grant of the minor modification application to Multicultural and ordered Global to cease its interim operation, thus permitting Multicultural to commence its permanent operation of WNWK, *see Letter from Chief, Audio Services Division to Counsel,* Ref. 1800B3-CJI, released August 11, 1992.[2] We shall dismiss the Application for Review for the following reasons.

BACKGROUND

2. Between 1983 and 1992, as the result of a comparative interim licensing proceeding from which the Commission specifically excluded applicants for the permanent license, Global was the interim operator of WNWK. *See Newark Radio Broadcasting Association v. FCC,* 763 F.2d 450 (D.C. Cir. 1985). Thus, Global's above-captioned interim authorization was granted on the express condition that:

> Program Test Authority under this permit shall expire upon the selection of a permanent operator for WNWK by the Commission and the operator's subsequent notice of readiness to commence operations.

3. In 1992, Multicultural was granted a construction permit (File No. BPH-821108BE) authorizing it to serve as the permanent operator of WNWK. *See Las Americas Communications, Inc.,* 7 FCC Rcd 2625 (1992), *recon. denied,* 8 FCC Rcd 51 (1992). That permit was issued on July 13, 1992 and specified the Empire State Building as the location for Multicultural's transmitter. Multicultural, however, on July 23, 1992, filed a minor modification application specifying a transmitter location atop the nearby Chanin Building. In the accompanying letter of transmittal, Multicultural stated that the application was for an "additional" construction permit to authorize immediate construction and operation from the Chanin Building, while retaining its original permit authorizing operation from the Empire State Building. It further explained:

> The Empire State Building . . . site . . . is presently undergoing extensive construction and redesign to permit the installation of a new master antenna which will . . . house some 12 radio stations. The construction and installation is running behind schedule and completion is not contemplated until some time in 1993. While Multicultural still hopes to locate on the Empire State Building, the present construction and uncertainty require that alternative site arrangements be made to permit the early commencement of service by the permanent licensee.

For these reasons, Multicultural stated, it requested expedited consideration of the application.

4. On July 30, 1992, the staff granted Multicultural's minor modification application. On the same date, Multicultural notified Global and the Commission that it was ready to commence operation. By letter dated August 5, 1992, Multicultural requested the staff to direct Global to terminate its interim operations so that Multicultural's permanent operations could commence. On August 7, 1992, Global filed a petition for reconsideration of the staff's grant of Multicultural's modification application. By letter dated August 11, 1992, the staff denied Global's petition for reconsideration and ordered Global to cease its interim operations.[3] Global filed the instant Application for Review on August 17, 1992. Multicultural commenced op-

[1] The pleadings in the case refer to the WNWK licensee as Multicultural Broadcasting, Inc. By letter dated May 27, 1994, Multicultural informed the Commission that it had changed its corporate name to Multicultural Radio Broadcasting, Inc. To reflect current Commission records, in this order we shall refer to the licensee by its revised name.

[2] On September 1, 1992, Multicultural filed an Opposition to Application for Review. On September 16, 1992, Global filed a Reply to Opposition. In addition, the record contains the following unauthorized pleadings: (1) Global's Supplement to Application for Review, filed October 15, 1993; (2) Multicultural's Opposition to Supplement, filed November 8, 1993; (3) Global's Reply to Opposition to Supplement, filed April 20, 1994; and (4) Multicultural's Motion to Strike Reply, filed June 8, 1994. Because these pleadings are unauthorized by 47 C.F.R. § 1.115(d), they shall be stricken. See para. 14, *infra.*

[3] The staff's August 11, 1992 letter ordered Global to cease

erating WNWK from atop the Chanin Building on August 20, 1992 and is currently licensed to operate from that facility.[4]

DISCUSSION

5. *Procedural Issue.* We have previously held that Global had no standing to participate in the comparative licensing proceeding to select the permanent licensee. *Las Americas Communications, Inc.*, 5 FCC Rcd 1634, 1635 (1990). The staff's August 11, 1992 letter permitted Global to petition for reconsideration of the grant of the minor modification application because it had shown good reason why it had not earlier objected to the grant, citing 47 C.F.R. § 1.106(b)(1). The letter stated that Global had not had an opportunity to object to the minor modification application because the application was granted before release of the public notice announcing that the application had been accepted for filing. However, the letter did not analyze whether Global met the second requirement set forth in 47 C.F.R. §1.106(b)(1) that a non-party must satisfy where it seeks to participate in a matter it has not previously participated in, *i.e.*, it did not analyze whether or not Global had a legitimate interest that was adversely affected by grant of the application. *See id.* As explained below, we find that Global has no such interest.

6. As an interim operator, Global's permit for WNWK was expressly conditioned to expire upon notification from the permanent licensee that it was ready to commence operations. Because Global's interim authorization was, by its very terms, held at sufferance, it has no legally cognizable interest affected by grant of a modification application filed by the permanent licensee, Multicultural. Global's desire to prolong its tenure as interim operator is not a legitimate interest which would confer the right to file a Petition for Reconsideration of the grant of the modification. Therefore, we will dismiss Global's Application for Review of the denial of its Petition for Reconsideration. Before doing so, however, we shall take this opportunity to address briefly the substance of Global's pleading.

7. *Nature of Application.* Global argues that Multicultural's above-captioned application is for a "new" authorization, not for a minor modification to its previously authorized facilities. Global then stresses that the application does not comply with several rules which apply to applications for new facilities.[5] We disagree with Global.

8. Applications for "new" authorizations are those proposing to fill an allotment for which the applicant does not already hold a construction permit or license. *See* 47 C.F.R. §§ 73.203(a) and 73.3573(a)(1). Section 73.3573(a)(1) of the Commission's Rules provides that a "major change . . . is any change in frequency or community of license. . . ." 47 C.F.R. § 73.3573(a)(1).[6] Applications proposing all other changes are minor modification applications. 47 C.F.R. § 73.3573(a)(2). As an application to change transmitter sites, Multicultural's application squarely fits into the minor modification category. Thus, its application is not required to satisfy rules applicable only to applications for new facilities or major modifications. Moreover, there is no logical reason to follow Global's suggestion to subject Multicultural's modification application to the more stringent analysis applicable to applicants for new facilities or major modifications. To obtain its construction permit for the Empire State Building site, Multicultural filed an application for new facilities which was granted in MM Docket No. 84-131 upon a finding that it complied with all relevant Commission requirements, including the 30-day public notice rule and the requirement that it satisfactorily demonstrate its financial and other basic qualifications. *See Las Americas*, 7 FCC Rcd at 2625. To now subject Multicultural's minor modification application -- which proposes the same channel, class, and community of license as its original application -- to the more stringent requirements applicable to "new" applications would foster only delay without any significant compensating public interest benefits.[7]

9. In addition, we reject Global's mischaracterization of Multicultural's permit for a minor modification as "plainly an *interim* authorization" that violates Global's rights to serve as interim operator until permanent operations are ready to commence. Global App. Rev. at 22 (emphasis added). "Interim authority" refers to the authority, such as Global had, to operate a facility until a permanent operator, such as Multicultural, is selected. It does not refer to the length of time a licensee intends to operate from a particular facility.

10. *Specification of Facilities Rule.* Global asserts that Multicultural's modification application violates §73.3516(c), which states that an "application for a construction permit for a new broadcast station, the facilities of which are specified in an outstanding construction permit or license, will not be accepted for filing." 47 C.F.R. §73.3516(c). This rule applies to "new" applications, not modification applications, and is intended to prevent applicants from applying for facilities which have been assigned to another applicant. Therefore this rule is inapposite here. An application specifying the same allotment, but different facilities, for which the applicant already holds a construction permit is by definition a

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interim operations that day at 11:59 P.M. By letter dated August 12, 1992, the staff extended Global's operating authority one week. On August 13, 1992, the Court of Appeals denied Global's motion for writ of mandamus. *Global Broadcasting Group, Inc. v. FCC*, 976 F.2d 46 (D.C. Cir. 1992) (table). On August 17, 1992, Global filed both the instant Application for Review and a petition for stay. On the following day, the Commission denied Global's stay request. *Memorandum Opinion and Order*, FCC 92-375, released August 18, 1992.

[4] Multicultural's application (File No. BLH-920911KF) to cover the minor modification construction permit was uncontested and was granted on March 10, 1993.

[5] For instance, Global notes that the Multicultural application did not contain a financial certification and was granted prior to the expiration of the 30-day period specified in 47 C.F.R. § 73.3580. *See* Global App. Rev. at 12-16. Global does not dispute that these requirements do not apply to minor modification applications.

[6] Certain changes in frequency, such as "the higher or lower class adjacent, intermediate frequency or co-channel or the same class adjacent channel," may in some cases be filed for on a minor change application.47 C.F.R. § 73.3573(a)(1). These exceptions are not pertinent here.

[7] Global's allegations that the Multicultural modification application complied with the higher filing fee requirement applicable to "new" applications and that Multicultural may have itself characterized the application as one for a "new or major change" permit, *see* Global App. Rev. at 10, is not determinative as to how the processing staff should treat the application.

modification application. *See* para. 8, *supra*. While modification applications are usually filed with the intent to modify and supersede a construction permit or license already held by the applicant, occasionally an applicant will file a minor modification application seeking an independent authorization which will not supersede an existing permit or license. No Commission rule bars such an application. This procedure streamlines the Commission's processes by not requiring the applicant to return to the Commission at a later date for a subsequent modification. Here, in the July 30, 1992 letter, the staff granted Multicultural's minor modification application "independent from and [without] effect on the [underlying] outstanding permit . . . for the Empire State Building facility." This action enabled Multicultural to begin immediately operations from the Chanin Building site without precluding it from operating consistent with the original authorization at the Empire State Building site once the ongoing extensive construction and redesign of the master antenna system there is completed.[8] The staff's action was consistent with similar action it has taken in cases where a permittee files a minor modification application seeking authority to operate from a nearby but less desirable site until its permanent site receives zoning approval or until a first adjacent channel station completes an authorized upgrade in facilities.[9]

11. *Premature Construction*. We agree with the staff's analysis and conclusion that Global has not presented sufficient evidence to show that Multicultural prematurely constructed its Chanin Building facility. Established Commission policy permits an applicant to purchase broadcast equipment before the application is granted. *Patton Communications Corporation*, 81 FCC 2d 336, 338-339 (1980). In addition, it is a relatively simple task to mount and hook up an antenna onto an existing tower and to connect the transmitter to the antenna, and Global has not shown that Multicultural performed these tasks before its modification application was granted. The bare fact that grant of the construction permit for the modification of facilities and the physical installation of those facilities occurred on the same day is not persuasive in this situation.

12. *Lack of Candor Regarding Availability of Empire State Building Site*. We affirm the staff's rejection as speculative of Global's assertions that the Empire State Building site was not available and may never become available to Multicultural and that Multicultural lacked candor in this regard. Global has simply failed to offer sufficient evidence of a loss of reasonable assurance of the site. In this regard, we note that on October 19, 1994, Multicultural filed an application for a second extension of construction permit, explaining it had recently been able to commence negotiations with respect to the terms proposed by the Empire State Building. *See* File No. BMPH-941019JF, Exh. 1. That application reveals that Multicultural's reasonable assurance of site availability has recently been reaffirmed. Specifically, in May 1994 the Empire State Building FM Committee expressly agreed to allow WNWK to share use of the master antenna system pending completion of a lease with the building and compensation being paid to the eleven stations that financed the antenna. *Id.*, Atts. A & B. On September 27, 1994, Multicultural was formally notified that its site application had been accepted by the Empire State Building Master FM Committee. *Id.*, Att. C.[10]

13. *Allegation of Procedural Taint*. Global asserts that the staff's action on Multicultural's modification application was tainted by *ex parte* communications, special treatment, and the sham consideration and denial of Global's petition for reconsideration. We disagree. The Commission's rules, in pertinent part, do not prohibit any *ex parte* communications between an applicant and the staff until such time as a formal opposition to the application is filed. 47 C.F.R. §§ 1.1204(a)(1) and 1.1208(c)(1); *see also* 47 C.F.R. § 1.1202(d). Global's allegations relate solely to oral and written communications between Multicultural and the staff made prior to the date Global filed a petition for reconsideration of the grant of Multicultural's modification application, which was the initial formal opposition filed in this case. Therefore, those communications did not violate the *ex parte* rules. In addition, the staff's grant of the modification application prior to release of the public notice of the application's acceptance for filing did not constitute improper "special" treatment. The staff acted in response to Multicultural's request for expedited consideration. Global was not prejudiced by this action because the rules do not require public notice prior to Commission action on a minor modification application, see paras. 7-8 & note 5, *supra*, and Global's objections were fully and properly considered in the staff's August 11, 1992 letter denying the petition for reconsideration. Finally, there is no evidence that the staff's action was a "sham." In this regard, we find that the staff's action did not create or alter the respective legal rights of Global and Multicultural. Instead, the staff simply enforced their pre-existing rights, *i.e.*, the requirement that Global terminate its interim operations upon notice that permanent operations were ready to commence. See para. 6, *supra*.

14. *Global's Supplement to Application for Review*. On October 15, 1993, Global filed a "Supplement" to its Application for Review. Therein, Global argues that Multicultural had failed to inform the Commission of a 1991 agreement which conveyed a substantial equity interest in WNWK to its former legal counsel. As noted, this pleading is unauthorized and can be dismissed on that ground alone. *See* note 2, *supra*. It is also procedurally defective pursuant to 47 C.F.R. § 1.115(c) (no application for review will be granted if it relies on factual questions upon which the designated authority has been afforded no opportunity to pass). In any event, our examination of the agreement reveals that it does not transfer any equity in Multicultural or WNWK to former counsel. Instead, as the court has found, it is a contingent fee arrangement which

[8] The staff's action preserved Multicultural's grandfathered right to use the Empire State Building based on the spacing rules applicable at the time its original application was filed. If the permit specifying the Empire State Building site were superseded by the modification application, Commission rules would preclude Multicultural from later filing a modification application proposing the Empire State Building site where the short-spacing situation would be exacerbated. *See* 47 C.F.R. § 73.213(a).

[9] *See, e.g., Letter to Vantage Communications, Inc. (KKCD(FM))*, Ref. 1800B3-DEB, dated November 22, 1993 (pending upgrade first adjacent channel KKBZ); *Letter to Radio Representatives, Inc. (KGDP-FM)*, Ref. 1800B3-BJB, dated July 1, 1993 (pending zoning approval); KING-FM, BPH-920707ID, non-routine grant of November 6, 1992 (same).

[10] The staff granted the extension application on December 19, 1994, and the date of required completion of construction is June 19, 1995.

provides for compensation to Multicultural's former counsel for legal services rendered based on the appraised value of WNWK. *See Renouf and Polivy v. Multicultural Broadcasting, Inc.*, Civ. A. No. 93-0315-LFO (*Order*, September 15, 1994, 1994 WL 521290; *Memorandum and Order*, September 2, 1994, 1994 WL 499060) (D.D.C. Dist. J. Oberdorfer). Though the nexus of compensation to station value is unusual, and thus calls for close scrutiny, such scrutiny does not reveal any evidence that former counsel held stock ownership interest in the licensee or control or influence over the licensee or the station.[11]

15. ACCORDINGLY, IT IS ORDERED, That the Application for Review filed on August 17, 1992 and the Supplement to Application for Review filed on October 15, 1993 by Global Broadcasting Group, Inc. and the Motion to Strike Reply filed on June 8, 1994 by Multicultural Radio Broadcasting, Inc. ARE DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

[11] We also note that Global's Reply to Opposition to Supplement to Application for Review is procedurally defective to the extent it seeks the reopening of the record to introduce additional evidence. *See* 47 C.F.R. § 1.45(b),(c).

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

John A Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

MM Docket No. 94-145

In the Matter of

Amendment of Section 73.202(b), RM-8556
Table of Allotments,
FM Broadcast Stations.
(Sageville, Iowa)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 10, 1995; Released: May 17, 1995

By the Chief, Allocations Branch:

1. At the request of The Sageville Shopper ("petitioner"), the Commission has before it the *Notice of Proposed Rule Making*, 9 FCC Rcd 7854 (1994), proposing the allotment of Channel 291A to Sageville, Iowa, as the community's first local FM service. Petitioner filed comments reiterating its intention to apply for the channel, if allotted. Supporting comments were also filed by KIKR, Inc., stating its intention to apply for Channel 291A, if allotted to Sageville.

2. We believe the public interest would be served by allotting Channel 291A to Sageville since it could provide the community with its first local FM service and interest has been expressed in applying for the channel. Channel 291A can be allotted to Sageville in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.[1]

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **July 3, 1995**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Sageville, Iowa	291A

4. The window period for filing applications will open on **July 3, 1995**, and close on **August 3, 1995**.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

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[1] The coordinates for Channel 291A at Sageville are 42-35-42 North Latitude and 90-43-18 West Longitude.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 94-133

In the Matter of

Amendment of Section 73.202(b), RM-8539
Table of Allotments,
FM Broadcast Stations.
(Wewoka, Oklahoma)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 10, 1995; Released: May 17, 1995

By the Chief, Allocations Branch:

1. At the request of Jean and Jerry Spencer ("petitioners"), the Commission has before it the *Notice of Proposed Rule Making*, 9 FCC Rcd 6769 (1994), proposing the allotment of Channel 284A to Wewoka, Oklahoma, as the community's first local FM broadcast service. Petitioners filed comments reiterating their intention to apply for the channel, if allotted.[1] No other comments were received.

2. We believe the public interest would be served by allotting Channel 284A to Wewoka since an interest has been expressed in providing the community with its first local FM service. Channel 284A can be allotted to Wewoka in compliance with the Commission's minimum distance separation requirements with a site restriction of 11 kilometers (6.8 miles) southwest to avoid short-spacings to Stations KMYZ-FM, Channel 283C1, Pryor, Oklahoma, KREK, Channel 285A, Bristow, Oklahoma, and KTMC-FM, Channel 285A, McAlester, Oklahoma.[2]

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **July 3, 1995**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Wewoka, Oklahoma	284A

4. The window period for filing applications will open on **July 3, 1995**, and close on **August 3, 1995**.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] As requested in the *Notice*, the petitioners also submitted a statement verifying that the information contained in their petition was accurate to the best of their knowledge, thus complying with the requirements of Section 1.52 of the Commission's Rules.

[2] The coordinates for Channel 284A at Wewoka are 35-04-52 North Latitude and 96-34-07 West Longitude.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T CORP.

Application for authority to acquire and operate capacity in the CIOS Cable System between Cyprus and Israel. File No. I-T-C-95-203

ORDER AND AUTHORIZATION

Adopted: May 10, 1995; Released: May 17, 1995

By the Chief, Telecommunications Division:

1. Upon consideration of the above-captioned uncontested application, filed pursuant to Section 214 of the Communications Act of 1934, as amended, we find that the present and future public convenience and necessity require a grant thereof.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-95-203 IS GRANTED, and AT&T Corp. (AT&T) is authorized to:

a. acquire on an ownership basis a one-half interest in and operate 90 MAUOs[1] in the CIOS Cable System between Cyprus and Israel;

b. acquire by lease, or other comparable means, a one-half interest in and operate necessary overseas connecting facilities; and

c. activate and operate these facilities to provide AT&T's regularly authorized services between the United States and Israel.

3. IT IS FURTHER ORDERED that the authority herein is granted subject to the terms and conditions set forth in the C&MA for the CIOS Cable System, as well as any Commission Order granting authority to acquire and operate facilities in the CIOS Cable System.

4. This Order is issued under Section 0.261 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this Order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Diane J. Cornell, Chief
Telecommunications Division
International Bureau

[1] A MAUO is defined in the CIOS Cable System Construction and Maintenance Agreement (C&MA) as the minimum practical unit of use, consisting of 64-kbps and an additional 8,533.333 bps for multiplexing each of the 1920 MAUOs in a Basic System Module.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T CORP.

Application for authority to convey capacity in the HAW-5 Cable System.	File No. I-T-C-95-204
Application for authority to convey capacity in the TPC-4 Cable System.	File No. I-T-C-95-206

ORDER AND AUTHORIZATION

Adopted: May 10, 1995; Released: May 17, 1995

By the Chief, Telecommunications Division:

1. Upon consideration of the above-captioned uncontested applications, filed pursuant to Section 214 of the Communications Act of 1934, as amended, we find that the present and future public convenience and necessity require a grant thereof.

2. Accordingly, IT IS ORDERED that applications File Nos. I-T-C-95-204 and I-T-C-95-206 ARE GRANTED, and AT&T Corp. (AT&T) is authorized to:

a. convey to Communication TeleSystems International on an Indefeasible Right of User (IRU) basis a whole interest in one MIU[1] of capacity in the HAW-5 Cable System; and

b. convey to Pacific Gateway Exchange on an IRU basis a one-half interest in one MIU of capacity in subsegments B1 and B2 of the TPC-4 Cable System between Point Arena, California and Chikura, Japan.

3. This Order is issued under Section 0.261 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this Order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Diane J. Cornell
Chief, Telecommunications Division
International Bureau

[1] A MIU is a unit designated as the minimum unit of investment in the HAW-5 and TPC-4 Cable Systems, allowing the use of 2.048 Mbps (30 MAUOs) and the additional 162,539.68 bps required for multiplexing in each direction. A MAUO is a 64-kbps circuit equivalent.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

WEST COAST TELECOMMUNICATIONS, INC.,
Complainant,

v.

NYNEX CORPORATION AND ITS OPERATING COMPANIES, THE NEW YORK TELEPHONE COMPANY, THE NEW ENGLAND TELEPHONE COMPANY, — File No. E-94-59

and

AMERITECH CORPORATION AND ITS OPERATING TELEPHONE COMPANIES, ILLINOIS BELL TELEPHONE COMPANY, INDIANA BELL TELEPHONE COMPANY, INCORPORATED, MICHIGAN BELL TELEPHONE COMPANY, THE OHIO BELL TELEPHONE COMPANY, AND WISCONSIN BELL, INC., — File No. E-94-60
Defendants.

ORDER

Adopted: May 11, 1995; Released: May 17, 1995

By the Chief, Formal Complaints and Investigations Branch, Enforcement Division, Common Carrier Bureau:

1. On April 4, 1994, West Coast Telecommunications, Inc. ("WCT") filed the above-captioned formal complaints against NYNEX Corporation, *et al*, ("NYNEX"), and against Ameritech Corporation, *et al*, ("Ameritech"), alleging violations of Sections 201(b), 202(a), and 203 of the Communications Act of 1934, 47 U.S.C. §§ 201(b), 202(a), and 203, as amended. On April 25, 1995, the complainant filed a Motion to Dismiss both complaints stating, *inter alia*, that WCT no longer wishes to pursue these complaints due to the pendency of other matters and the time and resources further prosecution of its claims would require.

2. We are satisfied that granting the complainant's Motion to Dismiss the complaints in these cases will serve the public interest by eliminating the need for further litigation and the expenditure of further time and resources of the parties and of the Commission.

3. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and the authority delegated in Section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, that complainant WCT's Motion to Dismiss is GRANTED.

4. IT IS FURTHER ORDERED that the above-captioned complaints are DISMISSED and that the proceedings are TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Thomas D. Wyatt
Chief, Formal Complaints and
Investigations Branch
Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Kingwood Cablevision, Inc. CUID No. TX0229
Kingwood, Texas

Benchmark Filing To Support
Cable Programming Service Price

MEMORANDUM OPINION AND ORDER

Adopted: March 20, 1995; Released: March 22, 1995

By the Chief, Cable Services Bureau:

INTRODUCTION

1. Here we consider a complaint about the price Kingwood Cablevision, Inc. ("Kingwood") was charging for its cable programming service ("CPS") tier in Kingwood, Texas, CUID No. TX0229. Kingwood has chosen to attempt to justify its price through a benchmark showing on FCC Form 393. This Order addresses the reasonableness of Kingwood's price only through May 14, 1994. At a later date we will issue a separate order addressing the reasonableness of the price after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a valid complaint. The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with valid CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

PROCEDURAL MATTERS

4. The first complete and timely CPS complaint in Kingwood, Texas, CUID No. TX0229, was completed and served on Kingwood on October 23, 1993 and received by the Commission on October 29, 1993.

5. Kingwood filed an FCC Form 393 for Kingwood, Texas, CUID No. TX0229 on May 16, 1994. Kingwood submitted additional information on February 7, 1995 in response to a Cable Services Bureau Public Notice offering operators the opportunity to make optional supplemental filings.[11]

6. Kingwood filed a motion to dismiss the complaint on November 22, 1993. In its motion, Kingwood requests that the Commission dismiss the complaint for a number of reasons. First, Kingwood asserts that the complainant incorrectly answered questions number 8 and 9 on FCC Form 329 as it then existed, because the answer to question 8 included rates for services that were sold on the basic tier, as well as rates for services that were sold on the CPS tier, and because the answer to question 9 included services on the basic tier, as well as services on the CPS tier. In addition, Kingwood urges the Commission to find the complaint deficient on the grounds that the complainant failed to indicate that the complaint was a corrected complaint, rather than an initial complaint, and also failed to identify accurately the date the complaint was mailed to the operator in his answer to question number 12.[12] Kingwood's

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[1] The findings in this Order do not in any way prejudge the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations. However, to the extent Kingwood has sought to take advantage of the refund deferral period under the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (1994) (*"Second Order on Reconsideration"*), the maximum permitted CPS price determined herein might also apply from May 15, 1994 until the date on which Kingwood implemented its CPS price under the new regulations. *See* para. 3, *infra*. Further, to the extent that the price as of March 31, 1994 is found to be excessive, reductions in Kingwood's price for the period after May 14, 1994 may be required to reflect the fact that Kingwood's price during the earlier period, which is used as the starting point to calculate its price for the prospective period, was unreasonable. *See* 47 C.F.R. § 76.922(b)(4)(C).

[2] 6 Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] Order in MM Docket No. 92-266, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration*, 9 FCC Rcd at 4190, paras. 150-152.

[9] *Id.*

[10] P47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

[11] Public Notice: Cable Services Bureau Announces Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases, DA 94-1556 (Dec. 29, 1994) (*"Public Notice"*); *see also* Public Notice: Cable Services Bureau Announces Extension of Time to File Under Optional Procedures Plan with Respect to Pending Pre-May 15 Benchmark Cases, DA 95-87 (Jan. 20, 1995).

[12] The complaint indicates that the form was mailed on September 8, 1993, which was the date the complainant mailed her initial complaint.

assertions do not persuade us that the complaint is invalid or should be dismissed. In general, we will find valid any complaint that states a claim on which relief can be granted and provides adequate information to allow us to process the complaint, despite minor flaws or inaccuracies. We believe this approach best implements the mandate of the 1992 Cable Act. Because the complainant's response to question number 9 includes channels contained on the CPS tier and because the rates listed in answer number 8 and on the attached bill indicate that the complainant received the CPS tier, we find it reasonable to conclude that the complainant objected to the CPS tier rate and that she believed that rate was unreasonable. We therefore find the complaint filed on October 29, 1993 valid and deny Kingwood's Motion to Dismiss.

DISCUSSION

7. Kingwood asserts that its monthly CPS tier price of $15.99 is justified by its benchmark filing because its price is lower than the maximum permitted charge of $16.01, as calculated in the filing. Upon review of Kingwood's Form 393 filing, we have found that Kingwood has not correctly calculated its maximum permitted price, and it is therefore appropriate to make the following adjustment to Kingwood's calculations in Form 393:

a. In its amended filing of February 7, 1995, Kingwood states that it calculated the Inflation Adjustment Factor (Form 393, Part II, Worksheet 1, Line 127, and Form 393, Part II, Worksheet 4, Line 401) using data it relied on when it set its $15.99 CPS price. If Kingwood had done so correctly (i.e., if it had completed Form 393 with accurate data, including the most recent inflation data available as of the time it set its price), and if based on this data Form 393 indicated that its price was reasonable, then Kingwood would have successfully justified its price under paragraph 94 of the *Third Order on Reconsideration*.[13] However, the figures Kingwood used are not consistent with data on which it should have relied in setting its CPS price. Specifically, Kingwood used data released by the U.S. Department of Commerce on May 28, 1993, to complete Lines 122, 123 and 125, but claimed an Adjustment Time Period extending through October 1993 (Line 124), which is inconsistent with an attempt to justify rates based on May 1993 data. Kingwood's calculation of the Inflation Adjustment Factor is thus incorrect.

b. We must therefore recalculate the Inflation Adjustment Factor on the basis of the most accurate data currently available for the date as of which Kingwood filed.[14] On its amended Form 393, Kingwood entered 13 months on Line 124, indicating that its filing was as of the end of October 1993. On July 29, 1994, the Department of Commerce released corrected inflation data including Gross National Product Price Index (GNP-PI) figures of 122.3 for the third quarter of 1992 and 125.7 for the third quarter of 1993. Using these GNP-PI figures, we calculate an Inflation Adjustment Factor through October 1993, the base date Kingwood used in justifying its rates, of 1.030.

8. Because of this error, we conclude that Kingwood has failed to demonstrate that its price for the CPS tier was notunreasonable. We will therefore set a price for this tier, incorporating the adjustment discussed above. This adjustment has the effect of reducing the maximum permitted monthly CPS tier price from $16.01 to $15.83.

CONCLUSIONS

9. Upon review of the record herein, we conclude that Kingwood's showing supports the maximum reasonable CPS tier price of $15.83 (plus franchise fee) for the period from October 29, 1993 to May 14, 1994.[15] We further determine that we will order appropriate refunds pursuant to Section 76.957 of the Commission's Rules, 47 C.F.R. § 76.957, in order to reimburse subscribers for the amount they paid in excess of a reasonable price.

10. We further conclude that Kingwood must reflect in its FCC Form 1200 rate filing for the period after May 14, 1994 the fact that Kingwood's price during the earlier period was unreasonable.[16] We reserve the right to make further adjustments to Kingwood's price for the period after May 14, 1994, upon completion of our review of Kingwood's FCC Form 1200 rate filings.

11. We further conclude that Kingwood has submitted in good faith a timely optional supplemental filing in response to our *Public Notice*. As provided in the *Public Notice*, we will relieve Kingwood of its obligation to obtain advance Commission approval of adjustments to its CPS price for one year following the release of this Order.

12. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the Motion of Kingwood Cablevision, Inc. to dismiss the October 23, 1993 complaint against its cable programming service price charged in Kingwood, Texas, CUID No. TX0229, IS DENIED.

13. IT IS FURTHER ORDERED that the complaint filed October 29, 1993 against the cable programming service price charged by Kingwood Cablevision, Inc. in Kingwood, Texas, CUID No. TX0229, IS GRANTED TO THE EXTENT INDICATED HEREIN.

14. IT IS FURTHER ORDERED that the benchmark filing submitted by Kingwood Cablevision, Inc. with respect to Kingwood, Texas, CUID No. TX0229, for the period beginning on October 29, 1993 and ending on May

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[13] Third Order on Reconsideration, MM Docket Nos. 92-266 and 92-262, FCC 94-40, 9 FCC Rcd 4316 (1994) (*"Third Order on Reconsideration"*).

[14] *See* 47 C.F.R. § 76.922(b)(9)(iii) (if a cable operator fails to justify its rates, rates must be adjusted in accordance with the most accurate data available at the time of analysis).

[15] This finding is based solely on the representations of Kingwood listed in paragraph 5, *supra*, and the modification described in paragraph 7, *supra*. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

[16] We reviewed Operator's FCC Form 1200 rate filing and confirmed that Operator calculated its rates for the period after May 14, 1994 using the rate that we find in this Order to be unreasonable.

14, 1994 justifies the maximum price of $15.83 (plus franchise fee) per month for Kingwood Cablevision, Inc.'s cable programming service tier.

15. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's Rules, 47 C.F.R. § 76.961, that Kingwood Cablevision, Inc. shall refund to subscribers that portion of the amounts paid for cable programming service for the period from October 29, 1993[17] to May 14, 1994 which exceeded $15.83 (plus franchise fee) per month and was thus unreasonable, plus interest to the date of the refund.

16. IT IS FURTHER ORDERED that Kingwood Cablevision, Inc. shall promptly determine the overcharges to CPS subscribers for the stated period, and shall within 30 days of the release of this Order file a report with the Chief, Cable Services Bureau, stating the cumulative refund amount so determined (including franchise fees and interest), describing the calculation thereof, and describing its plan to implement the refund within 60 days of Commission approval thereof.

17. IT IS FURTHER ORDERED, pursuant to Section 76.922(b)(4)(C) of the Commission's rules, 47 C.F.R. § 76.922(b)(4)(C), that Kingwood Cablevision, Inc. shall, within 30 days of the release of this Order, revise its Form 1200 filing with respect to Kingwood, Texas, CUID No. TX0229, for the period beginning May 15, 1994, to reduce the monthly charge per tier as of March 31, 1994 for Tier 2 (Line A6b) to equal $15.83 (plus franchise fee).

18. IT IS FURTHER ORDERED that Kingwood Cablevision, Inc. shall place into effect, within 30 days after its submission of the revised Form 1200 filing required above, a price that reflects the reduction in the CPS rate determined in this Order.

19. IT IS FURTHER ORDERED, pursuant to Section 76.960 of the Commission's rules, 47 C.F.R. § 76.960, that Kingwood Cablevision, Inc. shall not be required to obtain advance approval of adjustments to its CPS price in Kingwood, Texas, CUID No. TX0229, for one year following the release of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

[17] Our jurisdiction to order a refund dates from the earliest date a valid complaint is filed with the Commission. 47 C.F.R. § 76.961(b).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Monterey Peninsula TV Cable — CUID No. CA0039, Salinas, CA

Benchmark Filing to Justify Cable Programming Service Rate

MEMORANDUM OPINION AND ORDER

Adopted: March 20, 1995; Released: March 23, 1995

By the Deputy Chief, Cable Services Bureau:

1. Here we consider a complaint about the price Monterey Peninsula TV Cable ("Operator") was charging for its cable programming service ("CPS") tier in the community referenced above. Operator has chosen to attempt to justify its price through a benchmark showing on FCC Form 393. This Order addresses the reasonableness of Operator's price only through May 14, 1994. At a later time we will issue a separate order addressing the reasonableness of the price after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a complete and timely complaint. The filing of a complete and timely complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with complete and timely CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

4. Operator asserts that its monthly CPS price is justified by its benchmark filing because this price is less than the maximum permitted charge. Upon review, we have found no apparent errors that would result in Operator's actual CPS price exceeding its maximum permitted CPS price.[11]

5. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the complaint referenced herein against the cable programming service price charged by Operator in the community referenced above IS DENIED TO THE EXTENT INDICATED HEREIN.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Deputy Chief, Cable Service Bureau

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[1] The findings in this Order do not in any way prejudge the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations. However, to the extent the operator has sought to take advantage of the refund deferral period under the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (*"Second Order on Reconsideration"*), the maximum permitted CPS price determined herein might also apply from May 15, 1994 until the date on which the operator implemented its CPS price under the new regulations. *See* para. 3, *infra*.

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992) ("1992 Cable Act"); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] Order in MM Docket No. 92-266, Implementation of Sections of the Cable Consumer Protection and Competition Act of 1992: Rate Regulation, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration*, 9 FCC Rcd at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

[11] This finding is based solely on the representations of the operator. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

ML Media Partners, L.P. Trading as MultiVision Cable TV	CUID Nos. CA0308, CA0310, CA0312, CA0459, CA0479, CA0813 and CA0914

Filings To Support
Cable Programming Service Prices

MEMORANDUM OPINION AND ORDER

Adopted: March 17, 1995; Released: March 21, 1995

By the Deputy Chief, Cable Services Bureau:

INTRODUCTION

1. Here we consider complaints about the prices ML Media Partners, L.P., Trading as MultiVision Cable TV ("MultiVision") was charging for its cable programming service ("CPS") tiers in numerous communities around California (the "subject communities"). *See* Appendix for a list of the subject communities and the number of basic and CPS channels MultiVision offered in each community both before and after September 1, 1993. Rather than attempting to justify its prices through a benchmark or cost of service showing, MultiVision responded to the complaints by stating that it has no CPS tier in those systems. On June 24, 1994 MultiVision filed FCC Form 393 for the subject communities.[1] On February 3, 1995, in response to a Cable Services Bureau Public Notice offering operators the opportunity to make optional supplemental filings,[2] MultiVision submitted rate cards and channel line-ups in support of its claim that CPS tiers subject to rate regulation did not exist as of September 1, 1993 and still do not exist in any of the subject communities.

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[3] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a valid complaint. The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[4] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[5] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[6]

3. The Commission's original rate regulations took effect on September 1, 1993.[7] The Commission subsequently revised its rate regulations effective May 15, 1994.[8] Operators with valid CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[9] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[10] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[11]

4. In addition to complaining about Cablevision's prices for CPS, some of the complaints herein objected to Cablevision's rates for equipment. Rates for equipment that is used to receive the basic tier are regulated as part of the regulation of rates for the basic tier, and regulated by local franchising authorities persuant to our rules.[12] This equipment includes all equipment in a subscriber's home that is used to receive the basic service tier, regardless of whether such equipment is additionally used to receive a CPS tier.[13] When only charges for equipment that is used to receive the basic tier are being challenged, the complaint should properly be brought to the attention of the local franchising authority in the first instance, and not filed with this Commission.

BACKGROUND

5. The Cable Services Bureau has addressed the regulatory status of packages of channels offered on an a la carte basis in several orders resolving letters of inquiry ("LOIs") directed to cable operators.[14] Of particular relevance to this case, the Cable Services Bureau has released orders resolving LOIs regarding Century Cable TV's ("Century") systems in Huntington, West Virginia; Morgantown, West Virginia; Muncie, Indiana; Owensboro, Kentucky; Yuma,

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[1] *Cable Operators' Rate Justification Filings*, DA 94-526, 9 FCC Rcd 7762 (Cab. Serv. Bur. 1994).

[2] *Public Notice: Cable Services Bureau Announces Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases*, DA 94-1556 (Dec. 29, 1994); *see also Public Notice: Cable Services Bureau Announces Extension of Time to File Under Optional Procedures Plan with Respect to Pending Pre-May 15 Benchmark Cases*, DA 95-87 (Jan. 20, 1995).

[3] Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[4] 47 C.F.R. § 76.956.

[5] 47 C.F.R. § 76.956(b).

[6] *Id.*

[7] *Order* in MM Docket No. 92-266, *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[8] *See Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking*, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (1994) (*"Second Order on Reconsideration"*); 47 C.F.R. § 76.922(b).

[9] *See Second Order on Reconsideration*, 9 FCC Rcd at 4190, paras. 150-152.

[10] *Id.*

[11] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

[12] Cable Act of 1992, Section 623(b)(3), 47 U.S.C.§ 543 (b)(3).

[13] 47 C.F.R.§76.923(a).

[14] *See* e.g., MultiVision Cable TV, Prince Georges County, Maryland, LOI-93-15, DA 95-1352 (Cab. Serv. Bur. 1994).

Arizona; Brunswick, Georgia; and San Juan, Puerto Rico.[15] Relying on the Commission's *Going Forward Order*,[16] the Bureau's orders addressed the restructured service offerings implemented in these communities beginning September 1, 1993, in which Century eliminated its CPS tiers and offered instead only a basic service tier and a few a la carte channels. In each of these orders, the Bureau found that Century's restructured service offerings do not constitute a clear evasion of our rate rules. Specifically, the Bureau found that Century did not avoid rate regulation of most of its previous CPS channels because it moved those channels into a rate-regulated basic tier. With regard to the other channels, the orders permit Century to treat its a la carte packages as new product tiers that may be priced at market levels under the *Going Forward Order*.

6. Since the LOI orders found that the elimination of Century's CPS tiers did not constitute a clear evasion of rate regulation and those channels not placed on the basic service tier could be treated as a new product tier, there were no CPS tiers in those communities, as of September 1, 1993, that were subject to rate regulation pursuant to Section 76.922 of our rules. Therefore, the Bureau subsequently dismissed all FCC Form 329 complaints filed against Century in each of those seven communities.[17]

DISCUSSION

7. The rate cards and channel line-up cards submitted by MultiVision for each of the subject communities indicate that MultiVision restructured its service offerings in the subject communities on September 1, 1993 in essentially the same way that Century did for the seven areas mentioned above where LOI orders have been issued. MultiVision discontinued its CPS offerings and placed all of its channels into a single basic service tier, except for five channels which it offered on an a la carte basis. In each community, four of the five a la carte channels were previously offered on the basic and CPS tiers, and the fifth channel was not previously available over MultiVision's system.[18]

8. We feel that we have sufficient information regarding MultiVision's restructured offerings in the subject communities to conclude, in accord with the *Going Forward Order*, that they should be treated the same way that we treated Century's restructured offerings in the seven communities where we issued LOI orders. As in these latter communities, although the instant restructuring resulted in the elimination of Century's CPS tiers, the small number of channels that were offered in the a la carte packages did not constitute an evasion of our then existing rules. Therefore, consistent with the action taken in the LOI orders, we will allow MultiVision to treat its a la carte packages in the subject communities as new product tiers even though they would not qualify as new product tiers under the *Going Forward Order* because one of the conditions for a new product tier is that channels may not be removed from a basic service tier or a CPS tier. Thus, we need not rule on the FCC Form 329 complaints filed against MultiVision in the subject communities because there were no CPS tiers subject to rate regulation pursuant to Section 76.922 of our rules as of September 1, 1993. In addition, nothing in these complaints indicates that MultiVision's new product tiers violate any of the conditions for establishing those tiers outlined in the *Going Forward Order*.[19]

CONCLUSION

9. Accordingly, IT IS ORDERED that the a la carte packages created by ML Media Partners, L.P.,Trading as MultiVision Cable TV in the communities listed in the attached Appendix may be treated as new product tiers under our *Going Forward Order*.

10. IT IS FURTHER ORDERED that all FCC Form 329 complaints pending against the CPS rates of ML Media Partners, L.P., Trading as MultiVision Cable TV in each of the communities listed in the attached Appendix are DISMISSED.

11. This action is taken pursuant to delegated authority under Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Deputy Chief, Cable Services Bureau

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[15] *See Century Cable TV, Huntington, West Virginia*, LOI-93-49, DA 94-1314, 9 FCC Rcd 7337 (Cab. Serv. Bur. 1994); *Century Cable TV, Morgantown, West Virginia*, LOI-93-34, DA 94-1358, 10 FCC Rcd 115 (Cab. Serv. Bur. 1994); *Century Cable TV, Muncie, Indiana*, LOI-93-18, DA 94-1354, 10 FCC Rcd 99 (Cab. Serv. Bur. 1994); *Century Cable TV, Owensboro, Kentucky*, LOI-93-45, DA 94-1361, 10 FCC Rcd 127 (Cab. Serv. Bur. 1994); *Century Cable TV, Yuma, Arizona*, LOI-93-39, DA 94-1360, 10 FCC Rcd 123 (Cab. Serv. Bur. 1994); *Century Cable TV, Brunswick, Georgia*, LOI-93-44, LOI-94-4, DA 94-1426 (Cab. Serv. Bur., released Dec. 12, 1994); *Cable TV of Greater San Juan, San Juan, Puerto Rico*, LOI-93-38, DA 94-1425 (Cab. Serv. Bur., released Dec. 12, 1994).

[16] *See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Sixth Order on Reconsideration, Fifth Report and Order, and Seventh Notice of Proposed Rulemaking*, MM Docket Nos. 92-266 and 93-215, FCC 94-286, ¶ 51 (adopted November 10, 1994).

[17] *See Century Cable TV*, CUID Nos. IN0094, WV0156, WV0378, KY0120, AZ0019, DA 94-1422 (Cab. Serv. Bur., released Dec. 12, 1994); *Cable TV of Greater San Juan, San Juan, Puerto Rico*, CUID No. PR0001, DA 94-1530 (Cab. Serv. Bur., released Dec. 20, 1994); *Century Cable TV, Brunswick, Georgia*, CUID No. GA0040, DA 94-1531 (Cab. Serv. Bur., released Dec. 20, 1994).

[18] At the same time, MultiVision also made other changes to its channel line-up, including adding channels that had not previously been offered to the basic tier and, in some communities, deleting a basic tier channel from its system.

[19] We have excused one violation, *i.e.*, migrating channels from rate-regulated tiers, in only those situations where, as here, the new product tier is established as an outgrowth of our change in our a la carte policy. *See Going Forward Order* at Para. 51.

APPENDIX

CUID	Community	8/31/93 *Pre-Regulation* Basic	8/31/93 *Pre-Regulation* Tiers	9/1/93 *Post Regulation* Basic	9/1/93 *Post Regulation* Tiers	9/1/93 *Post Regulation* A la Carte
CA0308	Catoti	16	18	29	0	5
CA0310	Hermosa Beach	18	20	38	0	5
CA0312	Manhattan Beach	18	20	38	0	5
CA0459	Fairfield County	20	15	35	0	5
CA0479	Solano County	20	15	35	0	5
CA0813	Anaheim	20	24	44	0	5
CA0914	Villa Park	20	24	44	0	5

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Monterey Peninsula TV Cable — CUID No. CA0042, Seaside, CA

Benchmark Filing to Justify Cable Programming Service Rate

MEMORANDUM OPINION AND ORDER

Adopted: March 20, 1995; Released: March 23, 1995

By the Deputy Chief, Cable Services Bureau:

1. Here we consider a complaint about the price Monterey Peninsula TV Cable ("Operator") was charging for its cable programming service ("CPS") tier in the community referenced above. Operator has chosen to attempt to justify its price through a benchmark showing on FCC Form 393. This Order addresses the reasonableness of Operator's price only through May 14, 1994. At a later time we will issue a separate order addressing the reasonableness of the price after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a complete and timely complaint. The filing of a complete and timely complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with complete and timely CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

4. Operator asserts that its monthly CPS price is justified by its benchmark filing because this price is less than the maximum permitted charge. Upon review, we have found no apparent errors that would result in Operator's actual CPS price exceeding its maximum permitted CPS price.[11]

5. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the complaint referenced herein against the cable programming service price charged by Operator in the community referenced above IS DENIED TO THE EXTENT INDICATED HEREIN.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Deputy Chief, Cable Service Bureau

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[1] The findings in this Order do not in any way prejudge the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations. However, to the extent the operator has sought to take advantage of the refund deferral period under the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (*"Second Order on Reconsideration"*), the maximum permitted CPS price determined herein might also apply from May 15, 1994 until the date on which the operator implemented its CPS price under the new regulations. *See* para. 3, *infra*.

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992) ("1992 Cable Act"); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] Order in MM Docket No. 92-266, Implementation of Sections of the Cable Consumer Protection and Competition Act of 1992: Rate Regulation, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration*, 9 FCC Rcd at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

[11] This finding is based solely on the representations of the operator. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Telecable Associates, Inc.
Bryan and College Station, Texas

CUID Nos. TX0043, TX0044

Benchmark Filings to Support
Cable Programming Service Price

MEMORANDUM OPINION AND ORDER

Adopted: March 20, 1995; Released: March 22, 1995

By the Chief, Cable Services Bureau:

1. Here we consider complaints about the price Telecable Associates, Inc. d/b/a TCA Cable TV ("Operator") was charging for its cable programming service ("CPS") tier in the communities designated above. Operator has chosen to attempt to justify its price through identical benchmark showings on FCC Form 393. This Order addresses the reasonableness of Operator's price only through May 14, 1994. At a later date we will issue a separate order addressing the reasonableness of the price after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a valid complaint. The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with valid CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

4. The first valid CPS complaints in the franchise areas which are the subject of this Order were completed and served on Operator and received by the Commission on the dates set forth on Appendix A. Operator filed FCC Form 393 submissions on November 22, 1993; Operator has also filed supplemental information, most recently on February 7, 1995.[11]

5. Operator asserts that its monthly CPS tier price of $10.51 is justified by its benchmark filings because its price is lower than the maximum permitted charge as calculated in the filings. Upon review of Operator's Form 393 filings, we have found that it has not correctly calculated its maximum permitted price, and it is therefore appropriate to make the following adjustment to Operator's calculations in Form 393:

a. In Column G of Schedules A and C of Part III of its FCC Form 393, Operator did not correctly account for its income tax expense. By placing entries in these columns, Operator confirms that it is a tax-paying entity (i.e., a "C" corporation). However, Operator incorrectly calculated its income tax by simply applying the corporate tax rate to its return on investment. The Commission has stated that tax-paying business entities must gross-up their tax entries in Column G of Schedules A and C (i.e., calculate the tax as a percentage of return on investment plus tax).[12] By understating its tax entries in

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[1] The findings in this Order do not in any way prejudge the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations. However, to the extent Operator has sought to take advantage of the refund deferral period under the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (1994) (*"Second Order on Reconsideration"*), the maximum permitted CPS price determined herein might also apply from May 15, 1994 until the date on which Operator implemented its CPS prices under the new regulations. *See* para. 3, *infra*. Further, to the extent that the price as of March 31, 1994 is found to be excessive, reductions in Operator's price for the period after May 14, 1994 may be required to reflect the fact that Operator's price during the earlier period, which is used as the starting point to calculate its price for the prospective period, was unreasonable. *See* 47 C.F.R. § 76.922(b)(4)(C).

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] Order in MM Docket No. 92-266, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration*, 9 FCC Rcd at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

[11] Operator submitted additional information in response to a Cable Services Bureau Public Notice offering operators the opportunity to make optional supplemental filings. Public Notice: Cable Services Bureau Announces Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases, DA 94-1556 (Dec. 29, 1994) and Public Notice: Cable Services Bureau Announces Extension of Time to File Under Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases, DA 95-87 (Jan. 20, 1995) (together, *Public Notice*).

[12] First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 93-428, 9 FCC Rcd 1164, 1196 n.92 (1993) ("Our provision to gross-up the return amount for income taxes applies to all tax paying business entities to the extent that they

Column G, an operator reduces its effective rate of return on equipment and installations and thereby could increase its CPS price. We therefore recalculate Column G of Schedules A and C (and subsequent steps) using correctly grossed-up tax entries.

6. Because of this error, we conclude that Operator has failed to demonstrate that its price for the CPS tier was not unreasonable. We will therefore set a price for this tier, incorporating the adjustment discussed above. In doing so, we must also recalculate the Inflation Adjustment Factor in Form 393, Part II, Worksheet 1, on the basis of the most accurate data currently available for the date as to which Operator filed.[13] On its Form 393, Operator calculated the Inflation Adjustment Factor as of the end of October 1993 using data released on August 31, 1993. On July 29, 1994, the U.S. Department of Commerce released corrected inflation data including Gross National Product Price Index ("GNP-PI") figures of 122.3 for the third quarter of 1992 and 125.7 for the third quarter of 1993. Using these GNP-PI figures, we calculate an Inflation Adjustment Factor through October 1993, the base date Operator used in justifying its rates, of 1.030.

7. Upon review of the record herein, and having incorporated the adjustments discussed above, we conclude that Operator's showing supports the maximum reasonable CPS tier price of $10.38 (plus franchise fee)[14] for the period from the filing of the first valid complaint (as shown on Appendix A) to May 14, 1994.[15]

8. We further conclude that Operator must reflect in its FCC Form 1200 rate filing for the period after May 14, 1994 the fact that Operator's price during the earlier period was unreasonable.[16] We reserve the right to make further adjustments to Operator's price for the period after May 14, 1994, upon completion of our review of Operator's FCC Form 1200 rate filings.

9. We further conclude that Operator has submitted in good faith a timely optional supplemental filing in response to our *Public Notice*. As provided in the *Public Notice*, we will relieve Operator of its obligation to obtain advance Commission approval of adjustments to its CPS price for one year following the release of this Order.

10. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that the complaints referred to in Appendix A against the cable programming service price charged by in Bryan, Texas, CUID No. TX0043, and College Station, Texas, CUID No. TX0044 referenced at Appendix A herein ARE GRANTED TO THE EXTENT INDICATED HEREIN.

11. IT IS FURTHER ORDERED that the benchmark filings submitted by Operator justify the maximum reasonable price of $10.38 (plus franchise fee) for Operator's cable programming service tier.

12. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47 C.F.R. § 76.961, that Operator shall refund to subscribers in Bryan, Texas, CUID No. TX0043, and College Station, Texas, CUID No. TX0044, that portion of the amounts paid for cable programming service for the period from the filing of the first valid complaint in each franchise area (as set forth on Appendix A)[17] to May 14, 1994 which exceeded $10.38 (plus franchise fee) per month and was thus unreasonable, plus interest to the date of the refund.

13. IT IS FURTHER ORDERED that Operator shall promptly determine the overcharges to CPS subscribers for the stated periods, and shall within 30 days of the release of this Order file a report with the Chief, Cable Services Bureau, stating the cumulative refund amount so determined (including franchise fees and interest), describing the calculation thereof, and describing its plan to implement the refund within 60 days of Commission approval thereof.

14. IT IS FURTHER ORDERED, pursuant to Section 76.922(b)(4)(C) of the Commission's rules, 47 C.F.R. § 76.922(b)(4)(C), that Operator shall, within 30 days of the release of this Order, revise its Form 1200 filings with respect to Bryan, Texas, CUID No. TX0043, and College Station, Texas, CUID No. TX0044, for the period beginning May 15, 1994, to reduce the monthly charge per tier as of March 31, 1994 for Tier 2 (Line A6b) to equal $10.38 (plus franchise fee).

15. IT IS FURTHER ORDERED that Operator shall place into effect, within 30 days after its submission of the revised Form 1200 filings required above, a price that reflects the reduction in the CPS rate determined in this Order.

16. IT IS FURTHER ORDERED, pursuant to Section 76.960 of the Commission's rules, 47 C.F.R. § 76.960, that Operator shall not be required to obtain advance approval of adjustments to its CPS price in the franchise areas addressed herein for one year following the release of this Order, due to Operator's having submitted in good faith optional supplemental filings in response to our *Public Notice*.

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have a state or federal income tax obligation"). *See also* Cable Television Rate Regulation Questions and Answers Relating To FCC Form 393, Question and Answer No. 14 (released July 30, 1993) ("The federal tax expense should be calculated based upon a pre-tax return on investment").

[13] *See* 47 C.F.R. § 76.922(b)(9)(iii) (if a cable operator fails to justify its rates, rates must be adjusted in accordance with the most accurate data available at the time of analysis).

[14] These adjustments have the effect of causing Operator to calculate its permitted rates from Form 393, Part II, Worksheet 2 rather than Worksheet 1. However, Operator failed to complete Worksheet 2 of Form 393. Therefore, we have computed Worksheet 2 by using data supplied by Operator on its Form 1200 filing.

[15] This finding is based solely on the representations of Operator and the modifications described herein. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

[16] We reviewed Operator's FCC Form 1200 rate filing and confirmed that Operator calculated its rates for the period after May 14, 1994 using the rate that we find in this Order to be unreasonable.

[17] Our jurisdiction to order a refund dates from the earliest date a valid complaint is filed with the Commission. 47 C.F.R. § 76.961(b).

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

Appendix A

CUID No.	Date First Complaint Filed with FCC	Date Complaint Served
TX0043	12/13/93	12/13/93
TX0044	12/20/93	12/16/93

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Harron Communications Corp. State of Michigan	CUID Nos. MI0065, MI0540, MI0549, MI0626, MI0789, MI1052, MI1055, MI1793

Benchmark Filings To Support
Cable Programming Service Prices

MEMORANDUM OPINION AND ORDER

Adopted: March 20, 1995; Released: March 22, 1995

By the Chief, Cable Services Bureau:

INTRODUCTION

1. Here we consider complaints about the prices Harron Communications Corp. ("Harron") was charging for its cable programming service ("CPS") tier in the communities designated by the CUID numbers referenced above in the State of Michigan. Harron has chosen to attempt to justify its prices through benchmark showings on FCC Form 393. This Order addresses the reasonableness of Harron's prices only through May 14, 1994. At a later date we will issue a separate order addressing the reasonableness of the prices after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a valid complaint. The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with valid CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

PROCEDURAL MATTERS

4. The first complete and timely CPS complaints in the franchise areas addressed in this Order were completed and served on Harron and received by the Commission on the dates set forth in Appendix A.

5. Harron filed its initial FCC Forms 393 for the franchise areas addressed in this Order on November 15, 1993. Harron amended its justification on July 14, 1994, in response to a Cable Services Bureau Order citing common deficiencies observed in benchmark filings generally.[11] Harron further amended its justification on February 17, 1995, in response to a Commission letter which requested further clarification of Harron's showing.[12] Harron submitted additional information for all areas on February 7, 1995 in response to a Cable Services Bureau Public Notice offering operators the opportunity to make optional supplemental filings.[13]

6. Harrison Township, one of the complainants in CUID No. MI0540, filed a response to Harron's answer on December 7, 1993, claiming that Harron's package offering of a la carte channels (1) is subject to rate regulation and (2) violates the negative option billing provision of the Commission's rules, 47 C.F.R. § 76.981. The City of St. Clair, one of the complainants in CUID No. MI0549, filed an

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[1] The findings in this Order do not in any way prejudge the reasonableness of the prices for CPS service after May 14, 1994 under our new rate regulations. However, to the extent Harron has sought to take advantage of the refund deferral period under the *Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking*, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (1994) (*"Second Order on Reconsideration"),* the maximum permitted CPS prices determined herein might also apply from May 15, 1994 until the date on which Harron implemented its CPS prices under the new regulations. *See* para. 3, *infra*. Further, to the extent that the prices as of March 31, 1994 are found to be excessive, reductions in Harron's prices after May 14, 1994 may be required to reflect the fact that Harron's prices during the earlier period, which are used as the starting point to calculate its prices for the prospective period, were unreasonabe. *See* 47 C.F.R. § 76.922(b)(4)(C).

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] *Order* in MM Docket No. 92-266, *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration* 9 FCC Rcd at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

[11] *Cable Operators' Rate Justification Filings*, DA 94-526, 9 FCC Rcd 7752 (Cab. Serv. Bur. 1994).

[12] Letter from Peter G. Wolfe, FCC, to Gardner F. Gillespie, Esq., Counsel for Harron (Feb. 14, 1995).

[13] *Public Notice: Cable Services Bureau Announces Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases*, DA 94-1556 (Dec. 29, 1994) (*"Public Notice"*); *see also Public Notice: Cable Services Bureau Announces Extension of Time to File Under Optional Procedures Plan with Respect to Pending Pre-May 15 Benchmark Cases*, DA 95-87 (Jan. 20, 1995).

amended complaint on June 27, 1994, making similar arguments. Harron filed a motion to dismiss the amended complaint on July 20, 1994.

PRELIMINARY MATTERS

7. On September 1, 1993, Harron restructured its service offerings by removing three channels from its CPS tier and offering those channels on an a la carte basis either individually or as a package. In a recent order resolving a letter of inquiry addressed to Cablevision Industries ("CVI"), we found that CVI's similar offering in Wake Forest, North Carolina was not subject to rate regulation.[14] Relying on the Commission's *Going Forward Order*,[15] we found that CVI's restructured service offering did not constitute a clear evasion of our rate rules. We therefore permitted CVI to treat its a la carte package as a new product tier that may be priced at market level under the *Going Forward Order*. We apply the same principle to Harron's offering here, and we therefore find that Harron's a la carte package is not subject to rate regulation under Section 76.922 of the Commission's Rules.

8. With regard to negative option billing, we have found in previous decisions that cable operators did not violate the statutory and regulatory prohibitions against negative option billing when they created a la carte packages on or near the effective date of the Commission's rate regulations and automatically subscribed to those packages all customers who previously received the subject channels.[16] There is no evidence in the record that Harron's practices differed in any relevant respect from the facts in those cases. We therefore find that Harron has not engaged in prohibited negative option billing, and we shall dismiss the City of St. Clair's amended complaint.

DISCUSSION

9. Harron asserts that its monthly CPS tier prices are justified by its benchmark filings because its prices are equal to or lower than the maximum permitted charges, as calculated in the filings. Upon review of Harron's Form 393 filings, we have found that Harron has not correctly calculated its maximum permitted prices, and it is therefore appropriate to make the following adjustments to Harron's calculations in Form 393:

a. In its Form 393 filings, Harron's calculations for its rate-regulated package as of the initial date of regulation (Form 393, Part II, Worksheet 1 and Form 393, Part I) count Channel 54 as a regulated satellite channel on the CPS tier. However, according to the channel line-ups included with Harron's responses to complaints, Channel 54, the Global Network, is available only in Port Huron, CUID No. MI0065. Therefore, for all areas other than CUID No. MI0065, we reduce the number of satellite channels used in calculating the benchmark on Form 393, Part II, Worksheet 1, Line 121 from 29 to 28 and reduce the number of total regulated channels used to calculate the benchmark on Form 393, Part II, Worksheet 1, Line 121 from 41 to 40. We also reduce the number of channels in the CPS tier on Form 393, Part II, Worksheet 1, Line 102 and Form 393, Part I, from 29 to 28. These adjustments have the net effect of increasing the benchmark channel rate entered on Line 121 of Worksheet 1 and reducing the number of channels used to calculate the maximum permitted rate in Part I.

b. In its Form 393 filings, Part I, for Port Huron, Michigan, CUID No. MI0065, Harron sets forth $15.95 as its current rate for the cable programming service tier excluding franchise fees, and for all of the other franchise areas which are the subject of this Order, Harron sets forth $15.40 as its current rate for the cable programming service tier excluding franchise fees. However, on Worksheet 1 of Part II, Harron sets forth $10.91 as its monthly charge for the CPS tier for Port Huron, Michigan, CUID No. MI0065, and $10.95 as its monthly charge for the CPS tier for all other franchise areas which are the subject of this Order. The rates set forth in Part I are consistent with the charges which appear on Harron's rate cards for these franchise areas. Therefore, we have adjusted Harron's Forms 393 to reflect a charge of $15.95 for the CPS tier in Port Huron, Michigan, CUID No. MI0065, and $15.40 for the other franchise areas which are the subject of this Order. This adjustment increases the base rate per channel on Worksheet 1.

c. In Column G of Schedules A and C of Part III of its FCC Form 393, Harron did not report any income tax expense. Harron is a Subchapter C corporation and is therefore required to pay corporate income tax.[17] By omitting its tax entries in Column G, an operator reduces its effective rate of return on equipment and installations and thereby could increase its CPS price. We therefore calculate Harron's federal income tax allowance on Column G of Schedules A and C on the basis of a 35% corporate tax rate.[18] Furthermore, the Commission has stated that tax-paying business entities must gross-up their tax entries in Column G of Schedules A and C (i.e., calculate the tax as a percentage of return on investment plus tax).[19] In accordance with this principle,

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[14] *Cablevision Industries, Wake Forest, North Carolina*, DA 94-1550 (Cab. Serv. Bur., released Dec. 22, 1994).

[15] Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Sixth Order on Reconsideration, Fifth Report and Order, and Seventh Notice of Proposed Rulemaking, MM Docket Nos. 92-266 and 93-215, FCC 94-286 (released Nov. 18, 1994) (*"Going Forward Order"*).

[16] Letters of Inquiry on Negative Option Billing, LOI 93-1 *et al*, DA 95-106 (Cab. Serv. Bur., released Jan. 25, 1995); *Comcast Cablevision, Tallahassee, Florida*, LOI 93-2, DA 95-61 (Cab. Serv. Bur., released Jan. 20, 1995); *Warner Cable Communications, Milwaukee, Wisconsin*, LOI 93-44, DA 95-60 (Cab. Serv. Bur., released Jan.20, 1995); *see also Going Forward Order*, paras. 99-119.

[17] *See* Harron's filing on FCC Form 1205, page 1, filed August 15, 1994.

[18] *Id.*

[19] *First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking*, MM Docket No. 92-266, FCC 93-428, 9 FCC Rcd 1164, 1196 n.92 (1993) ("Our provision to gross-up the return amount for income taxes applies to all tax paying business entities to the extent that they have a state or federal income tax obligation.") *See also Cable*

we recalculate Column G of Schedules A and C (and subsequent steps) using a grossed-up federal income tax rate of 53.85% of Harron's return on investment.

d. In its Form 393 filings of February 7, 1995, Harron incorrectly calculated the Inflation Adjustment Factor (Form 393, Part II, Worksheet 1, Line 127, and Form 393, Part II, Worksheet 4, Line 401). Lines 122 and 125 of Form 393 require the operator to enter Gross National Product Price Index ("GNP-PI") data for the latest quarter for which data is available that ended before the date through which the Inflation Adjustment Factor is calculated. On its most recent Forms 393, Harron calculated the Inflation Adjustment Factor through October 1993. However, Harron completed Lines 122 and 125 using updated GNP-PI data for the first quarter of 1993, rather than the third quarter of 1993. Harron's calculation of the Inflation Adjustment Factor is therefore incorrect.

e. We must therefore recalculate the Inflation Adjustment Factor on the basis of the most accurate data currently available for the date for which Harron filed Form 393.[20] On its most recent Forms 393, Harron entered 13 months on Line 124, indicating that its filing was as of the end of October 1993. On July 29, 1994, the Department of Commerce released corrected inflation data including GNP-PI figures of 122.3 for the third quarter of 1992 and 125.7 for the third quarter of 1993. Using these GNP-PI figures, we calculate an Inflation Adjustment Factor of 1.030 through October 1993.

10. Because of these errors, we conclude that Harron has failed to demonstrate that its prices for the CPS tier were not unreasonable. We will therefore set prices for this tier, incorporating the adjustments discussed above. These adjustments have the effect of reducing the maximum permitted monthly CPS tier price for CUID No. MI0065 from $15.95 to $15.81 and for the other franchise areas which are the subject of this Order from $15.40 to $14.97.

CONCLUSIONS

11. Upon review of the record herein, we conclude that Harron's showing supports maximum reasonable CPS tier prices of $15.81 (plus franchise fee) for CUID No. MI0065 and $14.97 (plus franchise fee) for the other franchise areas which are the subject of this Order for the period from the filing of the earliest complaint in each franchise area (as set forth on Appendix A) to May 14, 1994.[21] We further determine that we will order appropriate refunds pursuant to Section 76.957 of the Commission's Rules, 47 C.F.R. § 76.957, in order to reimburse subscribers for the amount they paid in excess of a reasonable price.

12. We further conclude that Harron must reflect in its FCC Form 1200 rate filings for the period after May 14, 1994 the fact that Harron's prices during the earlier period were unreasonable. We reserve the right to make further adjustments to Harron's prices for the period after May 14, 1994, upon completion of our review of Harron's FCC Form 1200 rate filings.

13. We further conclude that Harron has submitted in good faith timely optional supplemental filings in response to our *Public Notice*. We will relieve Harron of its obligation to obtain advance Commission approval of adjustments to its CPS prices for one year following the release of this Order.

14. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the July 20, 1994 motion to dismiss filed by Harron Communications Corp. against the amended complaint filed on June 27, 1994 by the City of St. Clair IS GRANTED.

15. IT IS FURTHER ORDERED that the amended complaint filed on June 27, 1994 by the City of St. Clair IS DISMISSED.

16. IT IS FURTHER ORDERED that the complaints referred to in Appendix A against the cable programming service prices charged by Harron Communications Corp. in the City of Port Huron, Michigan, CUID No. MI0065; the Charter Township of Harrison, Michigan, CUID No. MI0540; the City of St. Clair, Michigan, CUID No. MI0549; the City of Memphis, Michigan, CUID No. MI0626; the City of Richmond, Michigan, CUID No. MI0789; Richmond Township, Michigan, CUID No. MI1052; the Village of Armada, Michigan, CUID No. MI1055; and Casco Township, Michigan, CUID No. MI1793, and all other complaints in these franchise areas related to the same prices, ARE GRANTED TO THE EXTENT INDICATED HEREIN.

17. IT IS FURTHER ORDERED that the benchmark filings submitted by Harron Communications Corp. with respect to the City of Port Huron, Michigan, CUID No. MI0065; the Charter Township of Harrison, Michigan, CUID No. MI0540; the City of St. Clair, Michigan, CUID No. MI0549; the City of Memphis, Michigan, CUID No. MI0626; the City of Richmond, Michigan, CUID No. MI0789; Richmond Township, Michigan, CUID No. MI1052; the Village of Armada, Michigan, CUID No. MI1055; and Casco Township, Michigan, CUID No. MI1793, for the period beginning with the filing of the first valid complaint in each franchise area (as set forth in Appendix A) and ending on May 14, 1994 justify the maximum price of $15.81 (plus franchise fee) in the City of Port Huron, Michigan, CUID No. MI0065 and the maximum price of $14.97 (plus franchise fee) in each other franchise area for Harron Communications Corp.'s cable programming service tier.

Television Rate Regulation Questions and Answers Relating to FCC Form 393, Question and Answer No. 14 (released July 30, 1993) ("The federal tax expense should be calculated based upon a pre-tax return on investment.")

[20] See 47 C.F.R. § 76.922(b)(9)(iii) (if a cable operator fails to justify its rates, rates must be adjusted in accordance with the most accurate data available at the time of analysis).

[21] These findings are based solely on the representations of Harron listed in paragraph 5, *supra*, and the modifications described in paragraph 9, *supra*. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

18. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's Rules, 47 C.F.R. § 76.961, that Harron Communications Corp. shall refund to subscribers that portion of the amounts paid for cable programming service for the period from the filing of the first valid complaint in each franchise area (as set forth on Appendix A)[22] to May 14, 1994 which exceeded $15.81 (plus franchise fee) per month in the City of Port Huron, Michigan, CUID No. MI0065, and exceeded $14.97 (plus franchise fee) per month in each other franchise area which is the subject of this Order and was thus unreasonable, plus interest to the date of the refund.

19. IT IS FURTHER ORDERED that Harron Communications Corp. shall promptly determine the overcharges to CPS subscribers for the stated periods, and shall within 30 days of the release of this Order file a report with the Chief, Cable Services Bureau, stating the cumulative refund amount so determined (including franchise fees and interest), describing the calculation thereof, and describing its plan to implement the refund within 60 days of Commission approval thereof.

20. IT IS FURTHER ORDERED, pursuant to Section 76.922(b)(4)(C) of the Commission's rules, 47 C.F.R. § 76.922(b)(4)(C), that Harron Communications Corp. shall, within 30 days of the release of this Order, revise its Form 1200 filings with respect to the City of Port Huron, Michigan, CUID No. MI0065; the Charter Township of Harrison, Michigan, CUID No. MI0540; the City of St. Clair, Michigan, CUID No. MI0549; the City of Memphis, Michigan, CUID No. MI0626; the City of Richmond, Michigan, CUID No. MI0789; Richmond Township, Michigan, CUID No. MI1052; the Village of Armada, Michigan, CUID No. MI1055; and Casco Township, Michigan, CUID No. MI1789, for the period beginning May 15, 1994, to reduce the monthly charge per tier as of March 31, 1994 for Tier 2 (Line A6b) to equal $15.81 (plus franchise fee) for the City of Port Huron, Michigan, CUID No. MI0065, and to equal $14.97 (plus franchise fee) for each other franchise area which is the subject of this Order.

21. IT IS FURTHER ORDERED that Harron Communications Corp. shall place into effect, within 30 days after its submission of the revised Form 1200 filings required above, prices that reflect the reductions in the CPS rates determined in this Order.

22. IT IS FURTHER ORDERED, pursuant to Section 76.960 of the Commission's rules, 47 C.F.R. § 76.960, that Harron Communications Corp. shall not be required to obtain advance approval of adjustments to its CPS prices in the franchise areas addressed herein for one year following the release of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

Appendix A

CUID No.	Date First Complaint Filed with FCC	Date Complaint Served
0065	10/15/93	10/12/93
0540	10/27/93	10/6/93
0549	10/13/93	10/6/93
0626	2/8/94	1/20/94
0789	10/25/93	10/20/93
1052	10/12/93	10/6/93
1055	10/13/93	10/6/93
1793	10/29/93	10/25/93

[22] Our jurisdiction to order a refund dates from the earliest date a valid complaint is filed with the Commission. 47 C.F.R. § 76.961(b).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-94

In re Applications of

SCRIPPS HOWARD BROADCASTING COMPANY — File No. BRCT-910603KX

For Renewal of License of Station WMAR-TV
Baltimore, Maryland

and

FOUR JACKS BROADCASTING, INC. — File No. BPCT-910903KE

For a Construction Permit for a New
Television Facility on Channel 2
at Baltimore, Maryland

Appearances

Kenneth C. Howard, Jr., Leonard C. Greenebaum, Sean H. Lane, Stephanie S. Abrutyn and Ronald F. Wick on behalf of Scripps Howard Broadcasting Company; *Martin R. Leader, Kathryn R. Schmeltzer and Gregory L. Masters* on behalf of Four Jacks Broadcasting, Inc.; and *Charles E. Dziedzic and Robert A. Zauner* on behalf of the Chief, Mass Media Bureau.

PARTIAL INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE RICHARD L. SIPPEL

Issued: May 10, 1995; Released: May 18, 1995

PRELIMINARY STATEMENT

1. This case was commenced by *Hearing Designation Order* DA 93-340 (*"HDO"*) published in 8 FCC Rcd 2326, released April 1, 1993. It is a comparative proceeding on the renewal of the broadcast license of VHF Station WMAR-TV (Channel 2) held by Scripps Howard Broadcasting Company ("Scripps Howard") and the competing application of Four Jacks Broadcasting, Inc. ("Four Jacks") for a construction permit for a new television facility on Channel 2 at Baltimore, Maryland. The issues set under the *HDO* are:

> To determine with respect to Four Jacks whether there is reasonable possibility that the tower height and location proposed would constitute a hazard to air navigation.
>
> To determine which of the proposals would, on a comparative basis, better serve the public interest.
>
> To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

2. This *Partial Initial Decision* decides only the qualifying issues that were added by the Presiding Judge against both parties after the release of the *HDO*. Rulings on these issues may resolve this case without the necessity for a resolution of the comparative issue.[1] *Garden State Broadcasting Limited Partnership v. FCC*, 996 F.2d 386, 394 n.10 (D.C. Cir. 1993) (where Commission disqualifies a challenging applicant a full comparative hearing is not necessary).

3. Four Jacks received a favorable summary disposition of the air hazard issue. *Memorandum Opinion and Order*, FCC 93M-315, released June 1, 1993. Phase I hearings were held on November 8, 9, 10, 12, 15 and 16, 1993 in Washington, D.C. There have been no proposed findings filed on the comparative issue.[2]

4. On February 1, 1994, issues were added against both parties based on posthearing filings. *See Memorandum Opinion and Order* FCC 94M-50 (qualifying issues added against Scripps Howard) and *Memorandum Opinion and Order*, FCC 94M-51 (qualifying issues added against Four Jacks). These issues could not be resolved by summary decision. *See Memorandum Opinion and Order*, 94M-177, released March 18, 1994 (Scripps Howard's motion denied) and *Memorandum Opinion and Order*, FCC 94M-246, released April 11, 1994 (Four Jacks' motion denied). Phase II hearings were held on the issues added against Scripps Howard on September 7-8, 1994, and on the issues added against Four Jacks on September 12-14, 1994. In accordance with a briefing schedule requested by the parties, Proposed Findings of Fact and Conclusions of Law were filed on December 23, 1994, and Reply Findings and Conclusions were filed on February 1, 1995.[3]

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[1] On February 25, 1994, the Commission ordered the freezing of all comparative issues while it reviews the comparative criteria. *Public Notice* 9 FCC Rcd 1055 (1994). That freeze order was responsive to a judicial determination that the integration criterion was arbitrary and capricious and therefore unlawful. *Bechtel v. FCC*, 10 F.3d 875 (D.C. Cir. 1993). The Commission authorized the continued litigation of qualifying issues provided that the case could be fully resolved without the need for subsequent comparative findings. *See Public Notice* FCC 94-204 (released August 4, 1994) *Modification of FCC Comparative Proceedings Freeze Policy* (Commission reaffirms that during freeze Administrative Law Judges will continue to issue decisions where consideration of comparative qualifications is unnecessary to resolve the case).

[2] The parties were scheduled to file proposed findings on the comparative issue on January 14, 1994. At the request of the parties, that date was cancelled and the parties were allowed to file on February 15, 1994. *See Order* FCC 93M-771, released December 29, 1993. Later, that date was cancelled in light of *Bechtel, supra*. *See Order* FCC 94M-53, released February 2, 1994.

[3] If one or both of the applicants is found to be basically

FINDINGS OF FACT[4]

Scripps Howard Broadcasting Company

5. Findings are made with respect to Scripps Howard on the following issues:

A. To determine whether Scripps Howard misrepresented or was lacking in candor in connection with deposition testimony and/or pleadings and/or delayed production in discovery relating to NBC documents used in connection with preparing a hearing exhibit that was relevant to the renewal expectancy.

B. To determine whether Scripps Howard misrepresented or was lacking in candor in connection with deposition testimony and/or pleadings and/or correspondence served on the Commission relating to the status of Janet Covington's diary of 1991 and/or Janet Covington's notes of 1992 which were used in connection with preparing a hearing exhibit that was relevant to the renewal expectancy.

C. To determine the effect of the foregoing issues on the qualifications of Scripps Howard to hold a Commission license for Channel 2 in Baltimore, Maryland.

Memorandum Opinion and Order FCC 94M-50, released February 1, 1994. The issues were sought by Four Jacks and were opposed by the Bureau.

6. The license renewal period for Scripps Howard was May 30 to September 3, 1991. Four Jacks filed its application on September 3, the last day of the renewal period. (SH Exh. 46.) A renewal expectancy will be awarded to an incumbent licensee provided that community related programming which meet ascertained community needs can be shown to have been developed, programmed and broadcast by the licensee during the renewal period. It is an important issue for an incumbent licensee to establish. The initial discovery efforts of Four Jacks had focused on Scripps Howard documents that would show whether and how Scripps Howard had sought to ascertain community needs.

7. In the Summer of 1992, Scripps Howard's counsel instructed Ms. Emily Barr, WMAR-TV's Director of Broadcast Operations, on how to prepare an exhibit that would qualify for the renewal expectancy. (Tr. 576.) She prepared such an exhibit from information concerning ascertainment efforts which she obtained from her own calendar entries and from the calendar entries of the station's General Manager, the Director of Public Relations, and Mrs. Covington, who was formerly the Director of Public Affairs. Mrs. Covington had retired in December 1991. (Tr. 576-77, 657.) Ms. Barr also spoke with those same persons about their ascertainment activities during the renewal period. (Tr. 576.) Based on the efforts of Ms. Barr, Scripps Howard compiled a hearing exhibit containing the universe of its evidence on renewal expectancy. (*See* SH Exh. 3 Att. E.)

8. On June 11, 1993, Four Jacks served a Motion For Production Of Documents. The Presiding Judge ordered Scripps Howard to produce, *inter alia*, (a) copies of all of its Issues/Programs Lists for the renewal period that relate to programming; (b) copies of all documents relating to the Issues/Programs Lists; and (c) copies of all program logs for the renewal period. *See Order* FCC 93M-400, released June 24, 1993. A request by Four Jacks for all documents that Scripps Howard considered relevant to its claim for a renewal expectancy was denied by the Presiding Judge because it was too broad and it would require Scripps Howard to disclose legal theories and thought processes. *Id.*

9. In the course of the ensuing document production, Scripps Howard failed to turn over copies of facsimile correspondence between Scripps Howard and NBC regarding NBC program printouts. The NBC printouts were retrieved at Scripps Howard's request for the purpose of determining the programming of NBC which might qualify as evidence relevant to renewal expectancy. Scripps Howard also failed to produce copies of Mrs. Covington's calendar for 1991 or copies of her notes which she had compiled in 1992 from her 1991 diary entries. The facsimile correspondence relating to the NBC printouts and the Covington notes were relevant to Four Jacks' discovery and were responsive to the Presiding Judge's *Order*. It is found as a fact that Scripps Howard had the documents but failed to produce them on time.

NBC Facsimile Correspondence

10. A discovery dispute arose over Scripps Howard's NBC facsimile correspondence (sometimes referred to only as "correspondence") shortly before the first evidentiary admissions session. Records of NBC programming were not retained by Scripps Howard. Not even records of network programming that were issue responsive were retained. In order to fill that gap, Ms. Barr contacted NBC for information on the relevant network issues-responsive programming that WMAR-TV had aired during the license term.[5]

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unqualified, there would be no need for further consideration of this case under revised comparative criteria. *See Garden State Broadcasting, supra*. Alternatively, based on representations in a Joint Request For Approval Of Settlement Agreement that was recently filed, if both parties should be determined to be qualified, the parties will withdraw from this litigation. Under the Agreement, Four Jacks' application would be dismissed with prejudice and Scripps Howard's renewal application would be granted. Each party is to pay their respective costs and there will be no payment to Four Jacks in return for its dismissal. Other non-adjudicative proceedings not in issue here that are before the Commission or a Bureau Chief would be dismissed voluntarily. There also would be no payoffs in connection with those dismissals. The Bureau has no objection to the Settlement.

[4] Exhibits are referred to as "SH Exh." for Scripps Howard and "FJ Exh." for Four Jacks. Reference is made to Proposed Findings of Fact and Conclusions of Law as "PFC". Reply Findings and Conclusions are referred to as "RPFC." The Integration and Diversification Statement filed by Four Jacks is referred to as the "IDS".

[5] During the Summer of 1992, Ms. Barr contacted NBC's archivists in New York and in Los Angeles. Each of the archivists returned Ms. Barr's telephone calls and verified the availability of the information. Shortly thereafter, on August 10, 1992, Ms. Barr sent facsimile requests to both NBC sources for programming that dealt with twenty ascertained issues. (SH Exh. 36 at 2; Tab A; and FJ Exh. 19.) The issues identified for NBC were taken directly from WMAR-TV's issues and program lists. (SH Exh. 36 at 17-18.) The New York archivist, Nancy

Complete copies of the NBC programming documents were timely furnished to Four Jacks in discovery. It was Ms. Barr's requesting facsimile correspondence that was the subject of the proposed subpoena.

11. On August 10, 1992, Ms. Barr had communicated to the NBC archivists in her facsimile message that:

> [W]e are in the midst of a license challenge and need information about specific NBC programming (both news and non-news) for our attorneys. As I mentioned on Friday, we are looking for examples of programming, both network and local that dealt with the ascertained issues we identified through interviews and local community leaders. The period in question is June 1, 1991 through September 30, 1991 and the issues are as follows: [Twenty issues specified.][6]

(SH Exh. 36 at 2 and Tab A; FJ Exh. 19.) This evidence would be probative of Scripps Howard's reliance on NBC for its local ascertainment. Ms. Barr was deposed on July 16, 1993. In her deposition, she accurately described the message that she had sent to the two NBC offices. But she also stated, erroneously, that she had not retained copies of the facsimile. (SH Exh. 36 at 3 and Tr. 1708.) Specifically, when asked at her deposition if she had a copy of her facsimile she responded "No, I don't."

12. Three months later, Four Jacks decided to seek the evidence from NBC through a subpoena. On October 20, 1993, eighteen days before the Phase I hearing, Four Jacks submitted a request for subpoena which the Presiding Judge denied. It was held that Four Jacks was seeking relevant discovery evidence. However, in view of the passage of time from the July deposition, the imminence of the hearing date, and the possibility of delay in the enforcement of a third-party subpoena or in the search for the documents at NBC, Four Jacks' request for a subpoena was denied. *See Order* FCC 93M-672, released October 23, 1993.

13. Four Jacks filed a Request For An Interlocutory Appeal and Scripps Howard filed an Opposition. The Presiding Judge called a conference for October 27, 1993, in an effort to resolve the discovery dispute without further litigation and without delaying the hearing. Scripps Howard had represented in its Opposition of October 26, 1993, that the NBC correspondence (Barr's facsimile to NBC and Cole's facsimile response) was not in the possession of WMAR-TV and that a search for the documents would be time consuming. At the conference held the next day, Scripps Howard's counsel disclosed that the NBC facsimile correspondence had been discovered by Ms. Barr after she had been asked to look again for the NBC correspondence. (Tr. 1710-12.) The documents were then sent by Ms. Barr to Scripps Howard's counsel by facsimile transmission at 5:45 p.m. on October 26, 1993.

14. Four Jacks asserts that Scripps Howard had a motive to keep the NBC correspondence from being discovered because they would have been used in deposition discovery of Ms. Barr to show that Scripps Howard's ascertainment had to be constructed in 1992 through NBC because the station's internal contemporaneous programs/issues lists for 1991 were missing. *See* Four Jacks RPFC at 5 and fn.6, *supra.*

Janet Covington's Notes

15. Scripps Howard had no prescribed system for retaining information on efforts to ascertain community needs and interests. Therefore, in the course of her preparation of the renewal exhibit in the Summer of 1992, Ms. Barr relied on her calendar notations for the relevant information. She also intended to obtain the calendars of three other persons who had relevant information: Arnold J. Kleiner, Maria Vellegia, and Janet Covington. (SH Exh. 36 at 5.) In addition, she spoke with these individuals about their activities and recollections.

16. Ms. Barr secured the calendars of Mr. Kleiner and Ms. Vellegia. However, Mrs. Covington had retired from Scripps Howard at the end of 1991. When Ms. Barr contacted Mrs. Covington, the latter advised that she had her calendar. Mrs. Covington offered to construct notes of her calendar entries which would be more readable than her original calendar notations. (SH Exh. 38 at 37-38.) Mrs. Covington had formed an opinion that her calendar "shorthand" entries would contain dates and names that would be meaningless to others without further explanation. (SH Exh. 38 at 39-40, 42.) Ms. Barr accepted the offer without verifying the legibility of the calendar entries and requested specifics on the dates of meetings, the identities of persons who attended, and summaries of the subjects discussed. (SH Exh. 36 at 6.) Mrs. Covington prepared the notes and forwarded them to Ms. Barr. (SH Exh. 36 at 6.) Mrs. Covington did not retain a copy of her notes and she was not furnished a copy by Scripps Howard. (SH Exh. 38 at 54.)

17. Ms. Barr testified that she made considerable use of the Covington notes for items that she thought should be included in the Scripps Howard ascertainment exhibit. She edited Mrs. Covington's notes for selective inclusion in Scripps Howard's renewal exhibit. (SH Exh. 36 at 7 and SH Exh. 37.) There is some evidence that after receiving the notes, Ms. Barr and Mrs. Covington discussed some of

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Cole, responded to Ms. Barr's request by facsimile which included examples of the types of documentation that were available. After receiving Cole's facsimile, Ms. Barr informed her by telephone that the NBC documents would be appropriate. (SH Exh. 36 at 2.) Ms. Barr received responsive programming documents from NBC offices in New York City (news) and Los Angeles (entertainment) totalling over two thousand pages. She made copies of the documents before sending them to Scripps Howard's attorneys.

[6] Four Jacks notes that WMAR-TV's second quarter issues/programs lists for 1991 reflected the issues of unemployment, the media, social welfare and child abuse. But those issues were not included in the third quarter's issues/programs lists. The third quarter issues were set on October 10, 1991, after the third quarter had expired. The lists contained seven new issues: literacy, economic development, homelessness, redistricting, the Supreme Court, cultural development and youth concerns. (SH Exh. 3, Att. F; Tr. 614-15.) The importance of the renewal expectancy provides a motive for an incumbent to model issues/programs lists to programming after the fact. But there is no indication that WMAR-TV's programming was fabricated. Therefore, there is no evidence of a misrepresentation and the addition of after-the-fact issues bears only on the lesser weight to be given the renewal evidence which is not directly at issue at this time.

the entries. (SH Exh. 36 at 6.) At the insistence of Scripps Howard's attorneys, Ms. Barr asked Mrs. Covington for the calendar in the Summer of 1993. (SH Exh. 36 at 8-9.) By that time, Mrs. Covington and her husband had moved their residence and the calendar could not be found. (SH Exh. 38 at 38, 55.) There was testimony of Ms. Barr which is sufficient to show that she had failed to organize the calendars in a central place until 1993. (SH Exh. 36 at 7 and Scripps Howard's PFC at 15 reflect that calendars and the Covington notes were for a time left in a pile on the floor of her office.) The materials were eventually stored by Ms. Barr in a file cabinet sometime in 1993 and these were later transferred to another file cabinet in late 1993 or 1994. (SH Exh. 36 at 7-8.) It was determined that in June 1993, Ms. Barr had sent the Covington notes to Scripps Howard's attorneys and that she had kept a copy.

18. It was in June-July of 1993 that Ms. Barr began to assemble documents in response to Four Jacks' document request. (SH Exh. 36 at 8.) It was also at that time that Scripps Howard's attorneys requested from Ms. Barr the calendars that were used for the renewal exhibit, including Mrs. Covington's calendar. (*Id.*) Ms. Barr informed Scripps Howard's counsel that she had no calendar for Mrs. Covington but that she had relied on the Covington notes. She believed at the time of her deposition in July 1993 that she had discarded the Covington notes. (SH Exh. 36 at 12.) In fact, she had forwarded the original set of Covington notes to Scripps Howard's counsel on June 25, 1993. (SH Exh. 36 at 9 and FJ Exh. 31.) However, in her testimony and on cross-examination, Ms. Barr asserted that she could not recollect sending the Covington notes to counsel or making a copy of the notes. (SH Exh. 36 at 8 and Tr. 1600, 1607, 1609.) Later, in February 1994, the notes which Ms. Barr had sent to counsel were found in the files of the law firm and a copy of those notes was located in Ms. Barr's file drawer.

19. After the issues were added, an attorney visited Ms. Barr in order to prepare for the Phase II hearing. There was no specific effort made to find the Covington notes which up to that point were believed to have been discarded. But for some other purpose, Ms. Barr looked into a file which she had in her cabinet that was marked "Memos To B&H [Baker & Hostetler]". There she found a copy of the Covington notes. She testified that she had no recollection of ever making a copy of the Covington notes or of placing the copy in the file drawer. That copy of the Covington notes also contained a cover sheet which was a "post it" note that Ms. Barr had written stating: "Janet Covington's original notes to me regarding appointments/ascertainments. She did not save the original calendar." (SH Exh. 36 at 9-10.) Ms. Barr also had sent a separate memorandum to an attorney at Baker & Hostetler dated June 25, 1993, which identified the Covington notes as having been prepared "specifically for this license challenge issue but she did not save her actual calendar." (FJ Exh. 31.)[7]

20. On July 13, 1993, eighteen days after Ms. Barr had sent the Covington notes to Baker & Hostetler, an attorney stated in a letter to Four Jacks' counsel that Mrs. Covington had once possessed notes prepared in 1991 that recorded various ascertainment meetings but she had not retained those notes. (FJ Exh. 30.) That statement was inaccurate because it at least implied that Mrs. Covington had prepared contemporaneous notes in 1991 when in fact the notes were a reconstruction prepared in 1992 for the purpose of assisting Ms. Barr in her preparation of Scripps Howard's renewal exhibit. Ms. Barr did not participate in the preparation of that letter. She also corrected the misstatement in her testimony. (SH Exh. 36 at 13 and Tr. 1587-88.) However, at the time the July 13 letter was written, a copy of the notes were in Ms. Barr's file cabinet and the original of the notes were lodged with Scripps Howard's counsel. It is accepted that Ms. Barr probably had forgotten that she still had a copy of the Covington notes. There was testimony received from a legal assistant at Baker & Hostetler who undertook a search on February 10, 1994, after Scripps Howard's attorneys learned that the copy of the notes had been discovered. He testified that the notes had been placed in a box at the law firm which was segregated from working files and which was marked:

> Documents sent by station but not produced because outside time period or because work product.

Counsel for Four Jacks and the Presiding Judge were notified promptly of this oversight and copies were made available forthwith. (Tr. 1539, 1743, and FJ Exh. 29.)

21. These mishaps in discovery are not substantial evidence of an attempt to mislead or deceive on the part of Scripps Howard. Nor has Scripps Howard lacked decisional candor with respect to the NBC correspondence or the Covington notes. Scripps Howard had done its job in June 23, 1993, when Ms. Barr sent the original Covington notes to Baker & Hostetler. She also had sent a cover memorandum on that date stating that she was forwarding the documents and advising officers of Scripps Howard of that fact by furnishing copies to them of the transmitting memorandum. There is no basis on the facts here to conclude that Scripps Howard knowingly participated in the manner in which its attorneys later handled the evidence.

22. Had there been an efficient production of the documents at the discovery phase there would have been no need to add the issues against Scripps Howard. But the circumstances as they unfolded left no alternative but to investigate fully, at Four Jacks' request, the fate of the documents which were clearly relevant and material to Scripps Howard's claimed renewal expectancy. It was determined that there was an unfortunate failure to retrieve documents at Scripps Howard and at the offices of its attorneys which caused expense and delay to Four Jacks, to Scripps Howard and to the Commission. However, it appears that attorneys directly responsible for the storage of the notes considered them to be work product and/or they secured the original of the document in a box reserved for documents which had been screened and had been determined to be outside the relevant time period. Therefore, as a result of a mishap, the Covington notes were not timely

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[7] That latter notation is probative of a claimed work product exemption from discovery. But the Presiding Judge denied application of the work product exemption on the grounds that Four Jacks had shown a specific need for the notes, particularly since the Covington calendar was considered lost. *Memorandum Opinion And Order* FCC 94M-50, *supra*. at Para. 13 and n.5. (Four Jacks had not been told that notes were believed discarded until Ms. Barr was deposed in July 1993. Scripps Howard had failed to use the prescribed procedures for seeking *in camera* review and protection of the notes as a work product.)

made available to Four Jacks in discovery.[8] The NBC correspondence and the Covington notes, which are the evidence that has been the subject of the issues, are not wholly incriminating. And to some degree, aside from their weight, the notes might support Scripps Howard's claim of a renewal expectancy. Therefore, there is no apparent motive found for Scripps Howard, either directly or through its counsel, to deliberately withhold the NBC correspondence or the Covington notes from Four Jacks or from the Commission.

Four Jacks Broadcasting, Inc.

23. Findings are made with respect to Four Jacks on the following issues that were added:

> A. To determine whether Four Jacks misrepresented or lacked candor before the Commission in its application, pleadings, documents and/or testimony regarding its integration commitment to resign then current employment positions of David D. Smith, Robert E. Smith, and/or Frederick G. Smith.
>
> B. To determine the effect of the foregoing issue on the qualifications of Four Jacks to receive a Commission license for Channel 2 in Baltimore, MD.

Memorandum Opinion and Order FCC 94M-51, released February 1, 1994. The issues were sought by Scripps Howard and were opposed by the Bureau.

24. Four Jacks has no ownership interest in or control over any medium of mass communication. Four Jacks is affiliated through common ownership with Sinclair Broadcast Group, Inc. ("Sinclair"), a holding company. The officers, directors and shareholders of Four Jacks control Sinclair through their stock ownerships and their positions as directors and officers of Sinclair. They are: David, Robert, Frederick, and J. Duncan Smith. (FJ Exhs. 1, 2 and 3 at 1-2.) The four Smiths are also related as brothers.[9]

Sinclair's Business

25. The evidence shows that through various subsidiaries, Sinclair owns and operates television stations WBFF(TV), Baltimore, Maryland; WPGH-TV, Pittsburgh, Pennsylvania; WTTE(TV), Columbus, Ohio; WTTO(TV), Birmingham, Alabama; and WCGV-TV, Milwaukee, Wisconsin. The stations in Columbus, Baltimore and Pittsburgh are Fox affiliates. The Birmingham station WTTO(TV) and the Milwaukee station WCGV-TV were acquired by Sinclair subsidiaries subsequent to the Phase I portion of this case. On November 22, 1994, the Commission granted an application for consent to the acquisition by a Sinclair subsidiary of television station WLFL(TV), Raleigh North Carolina. (FJ Exh. 1 at 2; Tr. 1793-94; FJ PFC at 48 n.15.) Sinclair's business is the management of its subsidiary television stations. (Tr. 1778-79.) That business also includes planning Sinclair's expansion as a holding company and providing programming for other stations in Sinclair's markets. (Tr. 1779; SH Exh. 40, Tab 14 at 44 [strategy] and 14 [programming service agreements with WNUV and WVTV].)

26. At the time of the hearing, Four Jacks had filed disclosure documents with the U.S. Securities & Exchange Commission ("SEC") in connection with a contemplated public offering of debentures, seeking initially to raise $100,000,000, an amount later increased to $200,000,000. The funds were to be used to refinance an existing bank debt and for business expansion. (SH Exh. 40 at Tab 14 and at Tab 17 [the "Prospectus".] One of Sinclair's publicly disclosed operating strategies was "to acquire additional broadcast properties which offer attractive growth opportunities." (SH Exh. 31 at 4, 47.)

27. On September 3, 1991, Four Jacks filed its application for Channel 2 which had recently been acquired by Scripps Howard. The license renewal period was coming to a close. Strategically, it was an opportune time for Sinclair to file a competing application. In keeping with Sinclair's publicly disclosed acquisition strategy, Sinclair was presented with an opportunity to acquire a VHF station at a comparatively low cost. Sinclair would be required to divest its interest in its Baltimore UHF Station WBFF(TV) if it succeeded in its effort to acquire VHF Station WMAR-TV in Baltimore. The award of a construction permit for a VHF facility in the Baltimore market on condition of divesting WBFF(TV) could have been an advantageous exchange.

28. Four Jacks presented evidence at the hearing seeking to show that it was feasible for the Smiths to remain as officers, directors and owners of Sinclair, and to continue to carry out their responsibilities at Sinclair while integrating into the management of Channel 2. From the evidence it appears that the proposal for the Smiths to manage Station WMAR-TV full-time without resigning from Sinclair, or without placing their Sinclair ownership in trust or some similar arrangement, probably would not be a feasible proposal. But the issue for resolution at this stage of the proceeding is only whether Four Jacks filed disclosures at the Commission and/or presented testimony which misrepresented or which was lacking in candor with respect to its integration proposal.

Application Disclosure

29. Four Jacks' Form 301 Application was filed on September 3, 1991. It disclosed that David, Robert and Frederick Smith "will resign from their then-current employment." (SH Exh. 46 [Form 301 Exh. 6] and Tr. 1984.) J. Duncan Smith, the fourth brother, was not proposed for integration and so there was no similar pledge for him. The Commission was further advised in the same application disclosure:

> Presently, Sinclair Broadcast Group, Inc., the ultimate parent of television station, WBFF(TV), Baltimore, Maryland, is managed by a committee

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[8] The Presiding Judge has ruled previously that Baker & Hostetler's reading of the Four Jacks' document request was possible, even if overly narrow and technical. *Memorandum Opinion and Order*, FCC 94M-177, released March 18, 1994 at n.2. That ruling remains the law of the case.

[9] Each owns 25% of Sinclair's stock and each serves as a Sinclair director. David Smith is President, Chair of the Board, Chief Executive Officer and a Director of Sinclair; Robert Smith is Vice President, Treasurer and a Director; Frederick Smith is Vice President, Assistant Treasurer and a Director; and Duncan Smith is Vice President, Secretary and a Director. (FJ Exh. 2 at 5; Tr. 1073-74, 1296.)

> consisting of the four Smith Brothers. All decisions are made by them jointly and they are involved in all aspects of the day-to-day operation of the station. David Smith is primarily responsible for negotiation and selection of film product for the station. The other brothers, however, share this task with him.
>
> When the application for Channel 2 is granted, David, Robert, and Frederick will be involved in the day-to-day operations of Channel 2 on a full-time basis as described above. Though they will carry, respectively, the titles of General Manager, Station Manager, and Operations Manager, *they will run the proposed family-owned station as a management committee,* ultimately sharing responsibilities for all aspects of station management and operations. As noted in the application, each is an officer and director of the applicant and each will be a full-time management employee of the applicant if its application for Channel 2, Baltimore, Maryland, is granted. To fulfill their integration commitments, each of the brothers will resign from their then-current employment and will limit or terminate any other activities that might interfere with their integration commitments. (Emphasis added.)

This disclosure obfuscates more than it clarifies. On the one hand, the Commission is advised by Four Jacks to ignore the respective management titles that were ascribed to David, Robert and Frederick because they will share responsibilities. *See Petition for Reconsideration and/or Clarification,* 7 F.C.C. Rcd 6800-01 (Comm'n 1992) (identified management must report to work at main studio on daily basis, spend substantial time there, use the station as "home base" and must not "ghost manage"). Then the Commission is advised that the integration of the Smiths into those positions will be able to be fulfilled because each of the brothers will resign from "then-current employment" and each will "limit or terminate" any other activities that might interfere with their integration commitments. After hearing and observing the Smiths testify, these conflicting disclosures are resolved by concluding that the Smiths have always intended to run Channel 2 as a committee from their Sinclair offices. But that intention was not fully disclosed to the Commission in Four Jacks' disclosure documents.

Integration Statement Disclosure

30. On April 6, 1993, the Presiding Judge ordered each party to file a "full, complete, and definitive statement of their respective integration proposals." *Prehearing Conference Order* FCC 93M-146. It was ordered that:

> the parties must state specifically their hourly integration commitments and their definitive intentions to leave their current employment and other business positions and ventures (service on board of directors, ownership of businesses).

Id. In response to that directive, Four Jacks filed its Integration and Diversification Statement ("IDS") on May 7, 1993, which disclosed that each of the three integrating Smiths:

> will participate full-time, a minimum of 40 hours per week, in the management of the proposed facility--[and] will resign from his then-current employment and will limit or terminate any other activities that might interfere with his integration commitment.

(SH Exh. 47 at 2-3.)

Written Testimony Disclosure

31. On September 13, 1993, Four Jacks exchanged its written direct testimony and stated with respect to each of the Smiths proposed for integration that:

> [i]n the event of a grant of the Four Jacks' application, to fulfill my integration commitment, I will resign from my then current employment and will limit or terminate any other activities that might interfere with my integration commitment.

(FJ Exhs. 2, 3 and 4.) The written testimony stated further that:

> [N]othwithstanding SBG's [Sinclair's] other media interests, I am able and committed to carrying out my pledge to manage, on a full time basis, a VHF television station in Baltimore, Maryland.

Id.

32. The Bureau notes and it is found here that there is no evidence of the Smiths specifically pledging to relinquish ownership of Sinclair or to leave their positions as officers and directors of Sinclair. But the converse is also true with respect to the three disclosures. There is no evidence in the disclosures that the Smiths specifically excluded Sinclair ownership and their positions with Sinclair as officers, directors and managers from the broad pledge to divest their then-current employment.[10] Therefore, the inquiry has focused on why Four Jacks left its integration disclosure to the Commission incomplete and whether such incomplete disclosure was intentionally misleading and/or lacking in candor.

[10] Four Jacks earlier represented in its Form 301 Application that "in mid-1988, [Robert Smith] became a full-time employee of Channel 45's parent, Sinclair Broadcast Group, Inc." (SH Exh. 46 [Exh. 6 at 2-3] and Tr. 2011.) The Application also represented that Frederick Smith "became a full-time employee of Sinclair Broadcast Group, Inc. on July 1, 1991." (SH Exh. 46.) David Smith testified that he works "as an employee" in the Baltimore office, Robert Smith testified to his present "employment" as he was asked on cross-examination, and Frederick Smith similarly confirmed his "employment" on cross-examination. (Tr. 1134; Tr. 1239, 2013; and Tr. 1371.) Therefore, it is concluded that the Smiths accepted the practice of being referred to as employees of Sinclair in state and federal disclosure and reporting documents.

Initial SEC Disclosure

33. While making the above disclosures at the Commission (wherein Four Jacks left unclear whether the Smiths would remain with Sinclair after receiving Channel 2) Sinclair, under common control of the Smiths, was making related but different disclosures at the SEC. On September 28, 1993, Sinclair stated to the SEC:

> [M]embers of the Smith Family hold ownership interests in various non-Company entities which are involved in businesses related to the business of the Company [e.g. Four Jacks]---.
>
> Members of the Smith Family are free to continue to own these interests and to acquire additional interests in television industry enterprises, including interests in enterprises that are competitive with the Company or the Subsidiaries. *Such activities could present a conflict of interest with the Company in the allocation of management time and resources of executive officers and in diversion of corporate opportunities.*

(SH Exh. 26 at 15.) (Emphasis added.) That same disclosure was filed with the SEC again on November 9, 1993, while the Phase I hearing was underway. (SH Exh. 31 at 15-16.) At that time, Sinclair was in the process of seeking millions of dollars from public investors to expand a business which would compete for the time of the Smiths if the Smiths actually were involved in the day-to-day management of Channel 2. Sinclair found it necessary to disclose the risk to prospective investors that the acquisition of Channel 2 by Four Jacks, with the attendant duty to carry out a full-time integration pledge, could present a conflict in the allocation of the Smiths' time between Sinclair and Four Jacks (although the name "Four Jacks" was not used in the disclosure). That SEC disclosure supports the interpretation that the proposal to leave "then-current" employment included a promise to leave employment at Sinclair in order for the Smiths to meet the forty hour per week integration commitments. However, the weight of the testimonial evidence and later SEC disclosures establishes that there was never any intention on the part of the Smiths to be taken away by the Four Jacks venture from the day-to-day management of Sinclair. As discussed below, the SEC staff apparently saw the hedged risk and required more specific disclosure about the Smiths' intentions to stay with Sinclair even if Four Jacks succeeded in obtaining Channel 2.[11]

Posthearing SEC Disclosure

34. By December 1993, a month after the Phase I hearing and the conclusion of the Smiths cross-examination, Sinclair's SEC Prospectus contained even more specific information about Four Jacks' Form 301 Application (where the representations had been made that the Smiths "would resign from their then-current employment and limit or terminate any other activities that might interfere with their commitments to Four Jacks" [SH Exh. 34 at 19]). Sinclair disclosed to the SEC:

> The Company [Sinclair] does not believe that such commitment of resignation requires them [the Smiths] to resign as officers or directors of the Company or to dispose of their ownership interests in the Company.
>
> Further, the Company has been informed by its FCC regulatory counsel and each of these officers that in neither the application nor the FCC proceeding with respect to Four Jacks has any of these officers committed to resign his official positions with, or dispose of his ownership interests in, the Company in the event that Four Jacks is awarded such channel by the FCC. Moreover, the Company believes that each [of the Smiths] will be able to perform all of his current duties with the Company while fulfilling his commitment to work for Channel 2.

(SH Exh. 34 at 19.) This is a far more precise and a much more complete description than the earlier disclosures made by Four Jacks to the Commission in the Form 301 Application, the IDS and the written testimony. David Smith testified that the more detailed description was added in December at the request of the SEC "to clarify for the benefit of investors the intentions of [the Smiths] with respect to the proposed Channel 2 facillty." (FJ PFC at 67 and Tr. 1908-09; 2187.) Thus, by December 1993, after the conclusion of Phase I of the hearing, it was made clear to the SEC by Sinclair that the Smiths would remain with Sinclair even if Four Jacks should acquire Channel 2. The same information became available to the Federal Communications Commission only by the evidence introduced by Scripps Howard in Phase II.

35. There is other Four Jacks disclosure in the written testimony that is considered. Each of the written testimonial statements of the Smiths includes the following language:

> [N]otwithstanding SBG's [Sinclair's] other media interests, I am able and committed to carrying out my pledge to manage, on a full-time basis, a VHF television station in Baltimore, Maryland, ---.

(FJ Exhs. 2, 3, 4.) The phrase "notwithstanding SBG's [Sinclair's] other media interests" reasonably implies that those "other media interests" would include Sinclair, although the name Sinclair was not used. It also could reasonably be assumed that without making a specific pledge of divestment or trust arrangement, the Smiths would continue to hold their stock in Sinclair. But the

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[11] Four Jacks was making its ultimate Commission disclosure of integration upon the exchange of its testimony on September 13, 1993. Sinclair was simultaneously disclosing related business risks to the SEC. On September 28, 1993, Sinclair disclosed to the SEC under the category of "Dependence on Key Personnel" that "[t]he loss of services of any of the present officers and especially its President and Chief executive Officer, David D. Smith, may have a material adverse effect on the operations of [Sinclair]." (SH Exh. 40, Tab 14 at 17.) In recognition of the importance of David Smith to the success of Sinclair's business, Sinclair had insured his life for $5 million. (*Id.*) A prospective investor might reasonably presume that David Smith intended to remain as Sinclair's full-time Chief Executive Officer without any distractions for the foreseeable future. (Tr. 1076, 1095, 1895.)

evidence does not establish that the Smiths could continue to serve as Sinclair's officers and directors and continue to carry out the functions associated with those positions while working 40 hours each week in their allotted positions at Channel 2.

36. The Smiths also testified that the phrase "then-current employment" was directed to possible employment that might exist in the future when Four Jacks was awarded the license for Channel 2. Some bizarre future employment *scenarios* were suggested (*e.g.* McDonalds [Tr. 2092], lemonade stand [Tr. 2092]) which would be abandoned or curtailed in order for the Smiths to fulfill their integration pledges. The Smiths also presented evidence that their supervisory duties at Station WBFF(TV) would be eliminated because their UHF Baltimore facility would need to be divested if WMAR-TV were acquired. (Tr. 1917-19; FJ Exhs. 26, 27, 28.) The hypothetical jobs are rejected as such and the definitive pledge to divest Station WBFF(TV) is irrelevant.

The Smiths as Employees of Sinclair

37. Notwithstanding usages in Commission filings of the term "employee" to describe relationships with Sinclair and the admissions of employee status on cross-examination, the Smiths testified that they do not consider themselves to be "employees" of Sinclair "in the traditional sense." (*See* FJ PFC at 61 and FJ Exhs. 26, 27, 28.) David Smith explained that he and his brothers are owner/operators and they do not have any of the limitations on their movements as would be the case with traditional employees such as salaried office workers. (*Id.* and Tr. 1771, 1822, 1919, 2009, 2133.) That opinion is shared by Robert Smith (Tr. 2010, 2036) and Frederick Smith (Tr. 2137-39.)

38. There is documentary evidence in the record which supports these views of the Smiths. Compensation paid the Smiths is reflected in the corporate income tax returns as "compensation of officers." (SH Exh. 40, Tab 1.) A Sinclair minute of February 2, 1993, reports an authorized bonus to be paid to the "owners" in the amount of 20% of Sinclair's 1992 excess cash flow. (SH Exh. 40, Tab 27.) And another Sinclair minute of September 20, 1993, authorized the payment of bonuses to the Smiths as compensation for "executive officers/principals" for their successfully carrying out "executive" functions that advanced the business of Sinclair. (SH Exh. 40, Tab 45.) Disclosure documents filed with the SEC referred to "Executive Compensation" for the Smiths. (SH Exh. 26 at 55; SH Exh. 31 at 57; SH Exh. 34 at 58; SH Exh. 40, Tab 18 at 18.) Finally, David, Robert and Frederick Smith are enrolled in an exclusive health program that is available to "Officers Only". (SH Exh. 40, Tab 29 at 1; Tr. 2027-28, 2040.)

39. On the other hand, Scripps Howard introduced certain of the business records of Sinclair to show that the Smiths were treated as employees for purposes of reporting to agencies. The names of the Smiths are included in a list that is submitted with payments to the Maryland unemployment insurance agency because the information is required by a state form. Also, payments to the Smiths are generated through the same payroll system that administers compensation to the employees of Sinclair and its subsidiaries. In general, the Smiths were not concerned or even knowledgeable of how their earnings were being reported on Forms W-2. Nor were they informed about their Forms W-4. These were documents that were merely forwarded to their accountants. Nor were they concerned whether they are considered "employees" for income tax reporting purposes. David Smith testified that he has never read the 401(k) plan. Nor had he seen the company's health benefit plan before being deposed in this case. The testimony of Robert and Frederick on these same points were similar. While Scripps Howard was able to show that the Smiths were reported as "employees" of Sinclair to various agencies, this evidence does not detract from the finding that they conduct themselves more as owners of Sinclair than as salaried employees as those words are commonly understood in everyday usage.

The Smiths' Integration by Committee

40. Each of the TV stations owned by Sinclair has a full-time General Manager who is responsible for the station's day-to-day operations. (FJ Exh. 2 at 2 and Tr. 1144, 1250, 2107.) Also, each of the stations has its own Business Manager and a business department. (Tr. 1145.) Sinclair has employed a full-time Comptroller who oversees the daily business transactions of the stations. (*Id.*) The Smiths talk with Station Managers intermittently approximately once each week. (Tr. 2111.) Their management style is further illustrated by the division of management responsibilities among the three brothers who work each day in the same office.[12] Each of the brothers has an area of interest. David Smith is primarily involved in strategy planning, including the acquisition of new stations. (Tr. 1996.) David Smith also handles most of Sinclair's syndication negotiations. (Tr. 2108.) He testified that those activities do not require an extensive amount of time. (Tr. 2000.) Robert Smith testified that he has responsibility for supervising the overhead which involves signing off on order requests. (Tr. 2065, 2107-09.) But he does not ordinarily review the individual station sales reports. (Tr. 2106.) Frederick Smith testified that he relies on the station personnel and apparently he does not exercise much supervision. (Tr. 1336-37.) In September 1994, he had cut back his involvement with Sinclair by a factor of about 50% and he was involved with selecting a company aircraft. He also was building a house for himself. (Tr. 2224-6.)

41. There is nothing in the past experience of the Smiths or in their work habits upon which to base a reasonable probability of the feasibility of the Four Jacks integration proposal. David, Robert and Frederick Smith represent that they intend to work at Station WMAR-TV at least forty hours each week. The brothers testified that they would switch to a "management committee" concept from the current "executive committee" approach at Sinclair. (Tr. 2101, 2205-06.) In that way, the three Smiths would operate at Four Jacks as a team of nominal department heads: David as the General Manager, Robert as Station Manager, and Frederick as Operations manager. (Tr. 2100, 2112, 2205-07, 2209-10.) That conclusion is consistent with the integration disclosure of the Form 301 Application that

[12] Scripps Howard examined the Smiths extensively on their involvements with the individual TV stations and with respect to the small service corporations that are used as collection points for rentals on tower spaces and conduits for maintaining WBFF(TV)'s transmitter. There was no evidence establishing that the Smiths' supervision of those small companies took an appreciable amount of time.

despite their holding titles of General Manager, Station Manager and Operations Manager, the Smiths will run Four Jacks as a "managing committee".[13] (SH Exh. 46 [Exh. 6 to Form 301].) The Smiths testified that they had not yet discussed whether or not they will have some overall management committee in place, formally or informally, in connection with the operation of Channel 2. (Tr. 1149; 1271-72; 1924; 2210.) Therefore, it can only be concluded that Channel 2 would be managed by a committee, no matter what it would be called, in substantially the same manner as the other Sinclair subsidiaries.

42. Overall, the evidence indicates that none of the Smiths has set hours for whatever tasks they perform at Sinclair. They each arrive at the office and leave at times they deem appropriate. (FJ Exh. 26 at 3; Tr. 1990, 2063, 2105.) David, Robert and Frederick Smith spend much of their time at Sinclair reading the trade press, responding to telephone calls, talking among themselves, contemplating business opportunities, and speaking to operating personnel who service the Baltimore WBFF(TV) facility. (Tr. 1143-44, 1248, 1338-39, 2226.) Based on the absence of any plan to show how the Smiths would assume Four Jacks' day-to-day management, it is found that the Smiths would manage WMAR-TV in the same way that they manage the other Sinclair stations. In view of the acquisition strategy of Sinclair, it cannot be concluded that the Smiths could or would devote eight hours each day to the management of one TV station.

43. Four Jacks has argued since Scripps Howard filed its motion to add the issues that the integration pledges did not go so far as to include the Smiths leaving their positions at Sinclair. After reviewing the evidence and observing the witnesses testify, it is found here as a fact that the incomplete disclosures of Four Jacks in its Form 301 Application, in its IDS, and in the sworn written testimony of the three Smiths were not meant to inform the Commission that the Smiths would resign from *all* positions of employment held by the Smiths on the date that they were awarded the license. That pledge would apply only to positions of employment that might interfere with Four Jacks' integration. And since the evidence establishes that the Smiths intended to operate Four Jacks as a committee, their employment with Sinclair would not interfere with the limited type of "integration" that was intended.

DISCUSSION

Scripps Howard

44. The misrepresentation/lack of candor issues were necessary to discover the facts and circumstances of the failures of Scripps Howard to produce relevant evidence with respect to the NBC correspondence and the Covington notes.[14] Also, it has been held that allegations of misrepresentation and/or lack of candor in discovery present substantial questions of fact. *Washington's Christian TV Outreach*, 99 F.C.C. 2d 395, 400-401 (Review Bd 1984) ("truthfulness and candor are as much expected in discovery as they are with respect to submissions to the Commission itself.") *See also WNST Radio*, 70 F.C.C. 2d 1036 (Review Bd 1978). But here the issues are resolved in favor of the renewal applicant. The documents with respect to both the NBC correspondence and the Covington notes were produced ultimately by Scripps Howard. While the testimony of Ms. Barr raised substantial questions, the NBC facsimile correspondence was identified by Ms. Barr in her deposition of July 1993. Discovery enforcement was not sought by Four Jacks until October 1993.[15] Four Jacks obtained copies of the NBC correspondence in time for their use at the hearing in November. The Covington notes had been forwarded timely by Ms. Barr on behalf of Scripps Howard to its attorneys. She also informed Scripps Howard's officers of the transmission. Therefore, Scripps Howard had done its job in complying with discovery of the Covington notes. While Ms. Barr may have had incidents of a faulty memory, she was consistent in disclosing that there were notes prepared by Janet Covington which were used in preparing the renewal exhibit. *Compare Broadcast Associates of Colorado*, 104 F.C.C. 2d 16 (Comm'n 1986)(inaccurate deposition testimony insufficient to warrant disqualification). And as a result of Ms. Barr's efforts, Four Jacks obtained discovery of the notes in time to examine Ms. Barr in Phase II and to preserve the testimony of Mrs. Covington in a deposition.[16]

45. There was a failure to make a timely disclosure of the Covington notes. But it was the Scripps Howard attorneys who failed to produce the document of which they had custody since June 1993. The Presiding Judge has made factual findings that Ms. Barr had timely disclosed the notes to counsel and Scripps Howard should be allowed to rely on its trial counsel to properly disclose the notes in discovery in the event the Presiding Judge ordered disclosure. For their part, counsel for Scripps Howard fought vigorously against disclosure and it was found that their reading of Four Jack's document request was incorrect. But it was at least an arguably plausible litigator's interpretation. *See Memorandum Opinion and Order*, FCC 94M-177, released March 18, 1994 at 3 n.2.

46. More importantly, the Commission has held that the conduct or misconduct of the applicant is the primary focus of the hearing and that counsels' conduct is merely tangential to the inquiry. *Opal Chadwell*, 2 F.C.C. Rcd 1197, 1198 (Review Bd 1987), *aff'd*, 2 F.C.C. Rcd 3458 (Comm'n 1987). As that policy is applied here, the focus is on Ms. Barr's testimony. She never denied the existence of facsimile correspondence with NBC and she timely

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[13] *Compare Minority Broadcasters of East St. Louis, Inc.*, 99 F.C.C. 2d 264, 267 (Review Bd 1984), *modified*, 57 Radio Reg. 2nd (P&F) 1390 (Comm'n 1985) (identified positions such as station manager must have management responsibilities that are implied in the title).

[14] It is not clear whether the Commission's procedures for fines and forfeitures would apply to a failure to make discovery. *See Algreg Celullar Engineering, et al.*, 9 F.C.C. Rcd 5098, 5149 (power of presiding trial judge to inquire into abuse of process and to assess forfeiture for failures of attorneys to make timely discovery not reached by Review Board.)

[15] There was no request by Four Jacks' attorneys for a conference which could have been held immediately following the Barr deposition. The Presiding Judge would have been in a position to require that the NBC facsimiles be thoroughly searched for and that if necessary, subpoenas of NBC for the documents would have been authorized. Instead, Four Jacks waited until October 1993, and then submitted an *ex parte* subpoena request which could have led to a delay of the proceeding.

[16] Due to a severe personal hardship if required to testify, Mrs. Covington's deposition testimony was received in evidence and she was not required to further testify. *See Memorandum Opinion and Order*, FCC 94M-512, released September 7, 1994.

forwarded the Covington notes to counsel. Scripps Howard did its part with respect to the evidence and its license should not be jeopardized by the treatment of documentary evidence by its counsel in discovery. *Cf. Algreg Cellular Engineering, supra* at 5150 (close examination of record reflects the witness apparently complied with directives to search for documents). Therefore, the weight of Commission authority requires a ruling here that the basic qualifying issues added against Scripps Howard be resolved in its favor.[17]

Four Jacks

47. It is concluded after a review of the evidence that the Smiths are "executive" employees and that they never intended to divest themselves from their positions with Sinclair.[18] Yet Four Jacks never explains why it was not made clear in its various integration pledges to the Commission (as it was made clear to the SEC) that they would remain with Sinclair and manage Channel 2 by committee while retaining their executive positions with Sinclair. The Commission was entitled to a full and complete statement as to what was intended. Yet no party who advances Four Jacks' position has come forward with an explanation.[19]

48. Four Jacks' motive for intending to convey a meaning of full divestment of current employment could be to gain a comparative integration credit. If the Commission could be convinced that the Smiths would withdraw from all employment, including Sinclair's operations, and devote 100% of their time to Channel 2, the integration proposal more likely would be a credible one and Four Jacks' comparative case would be substantially strengthened. Conversely, if Four Jacks failed to make a convincing case for the integration credit, the Smiths' expectations of receiving the license for Channel 2 in a comparative challenge would be substantially diminished, if not eliminated. What may not have been accounted for was the cross-examination and the use of the SEC evidence that would reveal clearly and unequivocally the Smiths' intentions to stay with Sinclair whether or not the Smiths are deemed to be "employees" of Sinclair.

49. Rather than explain its incomplete disclosure, Four Jacks focuses on the Presiding Judge's question about the possibility of full integration while the Smiths remain with Sinclair. Four Jacks quotes the concern without contesting the accuracy of the underlying facts:

> While it is recognized that Sinclair is a holding company for the three Fox affiliates and that day-to-day operations are conducted by individual station managers who are answerable to the Smiths, the full-time and attention of the three Smiths are at Sinclair, including its ongoing acquisition program.

Memorandum Opinion and Order FCC 94M-51, *supra* at Para. 8 and Four Jacks' PFC at 88-89. These are ultimate facts which are more significant than the myriad of evidence that was introduced on "employment." These stated concerns are central to Four Jacks' disclosure that the Smiths intended to "integrate" into the management of Four Jacks while retaining their positions of the day-to-day control and operation of Sinclair, the holding company. *See Kevin Potter*, 7 F.C.C. Rcd 4342 (Comm'n 1992) (to sustain claim for full-time integration where other business is retained applicant must set forth a specific and credible plan explaining how business would be managed to accommodate integration), citing *Blancett Broadcasting Co.*, 17 F.C.C. 2d 227 (Review Bd 1969). There was no plan presented. The Smiths were not even prepared to establish in their testimony how they would operate through Sinclair and/or rearrange Sinclair's affairs and still be able to integrate into the day-to-day operations of Four Jacks, a scenario that had never been thought through by the Smiths. *See Pleasure Island Broadcasting, Inc.*, 6 F.C.C. Rcd 4163, 4165 (Review Bd 1991) (convincing plan needed to show that a retained business will not interfere with a full-time integration commitment). Rather than fully disclose and proffer a plan, Four Jacks left it to the Bureau, Scripps Howard, and the Presiding Judge to probe for the full meaning of the Smiths' integration pledges.

50. In *Evansville Skywave, Inc.*, 7 F.C.C. Rcd 1699 (Comm'n 1992), the Commission acknowledged "the distinction between finding a proposal unreliable for comparative purposes and finding that an applicant's proposal reflects disqualifying conduct." *Id.* at 1700. For that purpose, it was held to be proper for the trial judge in *Evansville*, as was done here, to add issues of misrepresentation and/or lack of candor. *Id.* at n.7. *See also Royce International Broadcasting*, 5 F.C.C. Rcd 7063-65 n.6 (Comm'n 1990) (the record may indicate that an applicant's integration proposal is not only unreliable but contains false statements amounting to disqualifying

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[17] In cases for a new allocation, applicants will be bound by the disservice of their agents, including attorneys. *Hillebrand Broadcasting, Inc.*, 1 F.C.C. Rcd 419 (Comm'n 1986)(new service to the public is paramount and timely compliance with rulings of presiding judges is required at the risk of an application). But where dismissal would be the penalty, conditions for that remedy have been established by this Circuit. *See Communi-Centre Broadcasting, Inc. v. F.C.C.*, 856 F.2d 1551, 1554 (D.C. Cir. 1988) (there must be consideration given to (1) the applicant's justification for the failure to comply with an order; (2) prejudice to the other parties; (3) the burden shown to operate on the administrative system; (4) the need to deter future misconduct.) A dismissal of Scripps Howard's application would not be appropriate under those standards. The attorneys were reacting as litigators to discovery requests and discovery was ultimately completed. The only prejudice to Four Jacks was delay and expense which was in part invited as a result of the three months lapse before seeking relief.

[18] Four Jacks was assigned the burden of establishing by a preponderance of the evidence that it is qualified to be a licensee. *Telestar Inc.*, 2 F.C.C. Rcd 7352-53 (Comm'n 1987). *See also Greenwich Collieries v. Maher Terminals, Inc.*, 510 U.S. - , 114 S. Ct. 2251 (1994); and *Steadman v. SEC*, 450 U.S. 91, 101 S. Ct. 999 (1981).

[19] The Bureau argues that the "real question" is simply whether the duties that the Smiths would perform for Sinclair if the Four Jacks application were granted are of such a nature that they would interfere with the integration commitment in this proceeding. However, the Bureau offers no justification on why Four Jacks did not fully disclose right from the beginning the true intentions of the Smiths to stay as executive-employees of Sinclair even if Four Jacks is awarded the application. The Review Board has found a lack of candor when an applicant "breaches its duty to be fully forthcoming as to all facts and information relevant to a matter before the FCC, whether or not such information is elicited." *Silver Star Communications*, 3 F.C.C. Rcd 6342, 6349 (Review Bd 1988), quoted with approval in *Swan Creek Communications v. F.C.C.*, 39 F. 3d 1217, 1222 (D.C. Cir. 1994).

representations). The questionable statements were the commitments of the Smiths to leave all "then-current employment" and to "limit or terminate any other activities that might interfere with my integration commitment" without having specifically stated intentions of removing or limiting their responsibilities and activities as executives of Sinclair. It was only in SEC disclosures that Four Jacks made clear that there was never any intention to terminate or significantly limit the Smiths' involvement with the activities of Sinclair in order to integrate fully into the day-to-day management of Four Jacks.

51. Sinclair's SEC disclosure at the time of the exchange of testimony and the cross-examination of the Phase I hearing advised that the Four Jacks venture could present a conflict with Sinclair in the allocation of the Smiths' time. But after Phase I concluded, Sinclair changed its disclosure and began advising the SEC in December 1993 that "such commitment of resignation" would not require the Smiths to leave Sinclair. The feasibility of the proposal had become suspect when Scripps Howard opened its cross-examination. The post hearing disclosure to the SEC, which is highly reliable evidence, was introduced by Scripps Howard in Phase II. It showed the unvarnished truth, *i.e.*, a clear unequivocal commitment on the part of the Smiths to remain with Sinclair as full time executive-employees no matter how this case is decided. There has never been an explanation offered by Four Jacks as to why it was decided to give this Commission the inferior disclosure. It has been held in this Circuit:

> As a licensing authority, the Commission is not expected to "play procedural games with those who come before it in order to ascertain the truth."

RKO General, Inc. v. F.C.C., 670 F.2d 215, 229 (D.C. Cir. 1981).

52. After the Smiths were off the stand at Phase I's completion, Sinclair assured the SEC that none of the Smiths "has committed to resign" from Sinclair or has committed to "dispose of his ownership interests" in Sinclair. That intent, which was clearly and positively disclosed by Sinclair to the SEC in December 1993, was never presented to the FCC by Four Jacks in a disclosure document. *See* 47 C.F.R. §1.65 (an applicant must maintain the accuracy and completeness of an application by furnishing additional or *corrected* information).[20] (Emphasis added.) The corrected disclosure was made to the SEC. But it was never made to the FCC in a Four Jacks' filing. Without the Phase II inquiry and the resulting revelations of conflicting federal agency disclosures, this Commission would have been left with the incomplete disclosures that the Smiths would resign from "then-current employment," the plain meaning of which included employment at Sinclair.

53. Despite this lack of full disclosure to the Commission, there is not sufficient evidence found in this record to show the required intent to deceive. *See Weyburn Broadcasting Limited Partnership v. F.C.C.*, 984 F.2d 1220, 1232 (intent to deceive is an essential element of misrepresentation or lack of candor showing). For example, at the outset of the hearing, the Presiding Judge required that Four Jacks disclose the "hourly integration commitments" of the Smiths and "their intentions to leave current employment." *Prehearing Conference Order, supra.* The IDS made no specific mention of leaving Sinclair and therefore the IDS negatively inferred intentions of the Smiths to stay on at Sinclair. That inference is supported by later testimony wherein the Smiths consistently denied any intention of leaving Sinclair. Therefore, it is concluded that notwithstanding inadequate disclosures to the Commission, after considering the totality of the evidence, findings cannot be made here that Four Jacks' overall conduct showed the "deceptive or abusive intent" necessary to sustain a conclusion that Four Jacks "committed disqualifying misconduct." *Evansville, supra* at 1701.

SETTLEMENT

54. The Commission's rules with respect to the settlement of renewal cases provide that where a competing applicant seeks to dismiss an application prior to the issuance of an Initial Decision, "neither the applicant nor its principals [may receive] any monetary or other consideration in exchange for dismissing or withdrawing its application." 47 C.F.R. §73.3523(b)(1). The term "other consideration" consists of "financial concessions" as well as "nonfinancial concessions that confer any type of benefit on the recipient." *Id.* at (d)(4). *See also Formulation of Policies and Rules Relating to Broadcast Renewal Applicants*, 4 F.C.C. Rcd 4780 (1989),[21] *clarified on recon.*, 5 F.C.C. Rcd 3902 (1990). In order to eliminate the practice of applications filed to extract "settlement payments", the Commission adopted measures to remove any profit incentive. 4 F.C.C. Rcd at 4784. Under a literal interpretation of the prohibition, anything of value which a competing applicant receives which would not be obtainable without filing a challenging application would be "consideration." 47 C.F.R. §73.3523(d)(4). But the Commission's primary concern was the disservice to the public of "settlement payments" made to competing applicants seeking to extract a monetary settlement prior to an Initial Decision.

55. On March 24, 1995, Scripps Howard and Four Jacks submitted a Joint Request For Approval Of Settlement Agreement ("Settlement") wherein the two parties agree to the dismissal with prejudice of the Four Jacks application and the grant of Scripps Howard's renewal application. The Agreement, to which Sinclair is also a party, is contingent upon favorable resolution of the qualifying issues that were added against both parties. The Settlement would not involve any "settlement payment" by either party. The only consideration would be the dismissal of the Four Jacks competing application here and the dismissal of Scripps Howard's pleadings which are opposing requests of Sinclair subsidiaries for Commission administrative relief.[22]

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[20] Section 1.65 has been interpreted by the Commission to require "all facts---that may be of decisional significance so that the Commission can make a realistic decision based on all relevant factors." *Southern Broadcasting Co.*, 30 F.C.C. 2d 461, 464 (Review Bd 1972). It seems self-evident that the disclosures to the SEC should have been made to the FCC as well.

[21] Programming ascertainment or employment concessions are two examples of the nature of the "other consideration" which the Commission intends to prohibit. *Id.* at 4796 n.75. There are no such concessions in this Settlement.

[22] These unrelated proceedings involving TV stations that are owned by subsidiaries of Sinclair include: (a) Request for Assignment of License of WTTO(TV) Birmingham, Alabama (BALCT-930816KV); (b) Request for Assignment of License of

56. On April 3, 1995, the Bureau filed Comments On Joint Request For Approval Of Settlement Agreement ("Comments"). The Bureau supported all terms of the Settlement except a provision entitled "Further FCC Filings" (Settlement at Para. 8) whereby Scripps Howard and Four Jacks mutually agree to not directly or indirectly:

> file, or encourage, induce, or pay any other person or entity to file, any document with the Commission (including, but not limited to, any petition to deny, informal objection, or mutually exclusive application [but] excluding documents filed in proceedings generally applicable to the broadcast industry as a whole) that opposes the grant of any application filed by [Scripps Howard and its subsidiaries or affiliates/Sinclair and its subsidiaries or affiliates or by any entity that had, has, or will have a then-current agreement to provide programming for more than 25% of the broadcast time of a broadcast station] between (i) the date of filing of the Four Jacks application: and (ii) the date ten (10) years from the date of execution of this Agreement---.

The Bureau objected to this provision in its first Comments on the grounds that it would be against the public interest to prevent either party from bringing information to the Commission's attention where there is a *bona fide* belief that a station is not being operated in the public interest, citing *Nirvana Radio Broadcasting Corporation*, 4 F.C.C. Rcd 2778, 2779 (Review Bd 1989). In that case, the Review Board would not accept a pledge precluding any filing with the Commission which might jeopardize identified broadcast facilities because such a pledge was open ended and therefore would not be in the public interest.

57. Scripps Howard and Four Jacks twice requested and were twice granted extensions of time in order to file a Reply pleading which would address the Bureau's Comments. *See Order* FCC 95M-111, released April 20, 1995, and *Order* FCC 94M-114, released April 26, 1995. On April 28, 1995, the applicant parties filed their joint Reply which clarifies the applicants' intentions and which meets the Bureau's objection. Now Scripps Howard and Four Jacks represent that the language of the Settlement quoted above does not preclude either party from reporting a violation to the Commission.[23]

58. To make clear their intent, Scripps Howard and Four Jacks represent in their Reply pleading that:

> Paragraph Eight [of the Settlement] does not prohibit either party from filing with the Commission a declaratory statement bringing relevant information to the Commission's attention, so long as the statement does not object, formally or informally, to the grant of an application.

That representation is treated here as being incorporated into the Settlement as a material clarification. It is now evident that the parties consider themselves free to report relevant information to the Commission at anytime and that they have agreed only to refrain from "[acting] as an advocate for any particular course of action by the Commission based on the submitted information." And even that limitation applies for a limited period of time, *i.e.* ten years from the signing of the Settlement.

59. The Settlement also provides in Paragraph 8 that the parties will not file "mutually exclusive applications" for the next ten years. Were such a provision to have an adverse effect in the coverage area, as in a covenant not to compete, it could prevent a future filing which might involve improvement in service to the public. *See James S. Rivers, Inc.*, 26 F.C.C. 4 (Comm'n 1959). But there already exists competition in the Baltimore television market between Scripps Howard and Four Jacks. Furthermore, both parties are able under the Settlement to continue to upgrade present facilities, construct new facilities or acquire other facilities in the same market. And in view of the history of conflict between Scripps Howard and Sinclair, the parties are entitled to a ten year respite from litigation at the Commission. *See Intercontinental Radio, Inc.*, 62 Radio Reg. 2d (P&F) 1565, *supra* at 1567 (Comm'n 1985) (Commission approves settlement provision which would prevent subsequent filing of competing applications for twelve years).

60. It is concluded that Section 73.3523(b) does not prohibit a settlement here since the policy against settlement payments to non- *bona fide* competing applicants is not adversely effected. A settlement on all fronts would be the most efficient outcome and one that is in the public interest. Four Jacks made a *bona fide* challenge in its competing application for Channel 2. There was no expectation of Four Jacks receiving any monetary payoff. The non-monetary benefit that Sinclair[24] and the Smiths would receive in settling the case at this time would be the removal of challenges which Scripps Howard has made to pending but unrelated assignments of Sinclair controlled stations. As noted by the Bureau, Four Jacks, the entity making the challenge, receives no benefit from the Settlement.[25] Significantly, there is to be no monetary payoff even for costs. Settlement presents additional significant

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WCGV-TV, Milwaukee, Wisconsin (BALCT-930816KU); (c) Request for Assignment of License of WVTV(TV), Milwaukee, Wisconsin (BALCT-940829KF); and (d) Request for Assignment of License of WNUV(TV), Baltimore, Maryland (BALCT-941214KI).

[23] On May 4, 1995, the Bureau submitted *sua sponte* its Comments on the Reply wherein the Bureau acknowledges that it has been persuaded by the clarification and that the Bureau withdraws its objection to Paragraph 8 of the Settlement. The Presiding Judge has received and considered the Bureau's Comment. *See* 47 C.F.R. §1.294(d) (additional pleadings may be authorized by the presiding officer).

[24] The Bureau takes the position that Scripps Howard's request to dismiss the challenges to Sinclair's petitions to assign does not leave Four Jacks in any better position than before Four Jacks filed the challenging application. That proposition is literally true and correct. The real party-in-interest to the "consideration" is Sinclair, the holding company which although not a party to this proceeding, owns the effected stations which would receive the benefit from the Settlement. And the Smiths own and control all of the effected entities.

[25] Four Jacks was organized by the Smiths as a corporate entity which is separate and apart from Sinclair. The purpose of Four Jacks was the acquisition of Channel 2. That purpose no longer exists.

efficiencies since it will remove from the Commission's docket those other proceedings as well as this litigation matter. For its part, the licensee Scripps Howard will have the uncertainty of a challenge dismissed. And considerable Commission resources will be saved.[26] All of these factors, combine to meet the Commission's policy and analysis on renewal settlements which states that:

> settlements, *where abuse of process is not a factor*, can be an efficient way to resolve comparative licensing proceedings, preserve funds for service to the public, and allow [the Commission] to preserve [its] limited resources.

4 F.C.C. Rcd at 4784. (Emphasis in original.)

CONCLUSIONS OF LAW

61. The Presiding Judge has determined the following conclusions of law:

A. There is not a preponderance of substantial evidence in the record to establish that Scripps Howard misrepresented or lacked candor in connection with deposition testimony and/or pleadings and/or the production of documents and/or related correspondence, and Scripps Howard has sustained its burden of proof on the issues added in FCC 94M-50.

B. There is not a preponderance of substantial evidence in the record to establish that Four Jacks misrepresented or lacked candor in its application, pleadings, documents and/or testimony regarding its integration commitment to resign then current employment positions of its principals, and Four Jacks has sustained its burden of proof on the issues added in FCC 94M-51.

C. A preponderance of substantial evidence shows that Four Jacks' application was not filed for the purpose of achieving a monetary settlement payment.

D. The prohibition in Section 73.3523(b) against considering a settlement that is supported by consideration before issuance of an Initial Decision does not apply under the procedural posture of this case.

E. The proposed Settlement, as clarified by the parties' joint Reply of April 28, 1995, is in accord with the Commission's rules and policies regarding settlement of comparative renewal cases, and Scripps Howard and Four Jacks have met the burden of persuasion that approval of the Settlement in this case would be in the public interest.

ORDER

Accordingly, IT IS ORDERED that the Joint Request For Approval Of Settlement Agreement filed on March 24, 1995, by Scripps Howard Broadcasting Company and Four Jacks Broadcasting, Inc., as clarified,[27] IS ACCEPTED and APPROVED.

IT IS FURTHER ORDERED that the application of Four Jacks Broadcasting, Inc. (File No. BPCT-910903KE) for a construction permit for a new television facility on Channel 2 in Baltimore, Maryland IS DENIED and the application IS DISMISSED with prejudice.

IT IS FURTHER ORDERED that the application of Scripps Howard Broadcasting Company (File No. BRCT-910603KX) for the renewal of license at station WMAR-TV, in Baltimore, Maryland IS GRANTED.[28]

FEDERAL COMMUNICATIONS COMMISSION

Richard L. Sippel
Administrative Law Judge

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[26] At the early stages of this proceeding, Four Jacks sought issues against Scripps Howard under allegations of anticompetitive conduct, racial discrimination, and abuse of commission processes. None of those issues were added. *See Memorandum Opinion and Order*, FCC 93M-445, released July 8, 1993. The abuse of process allegations cited petitions for reconsideration of short-form assignments of three TV stations owned by Sinclair. Those petitions were filed by Scripps Howard shortly after Four Jacks had filed its competing application for Channel 2. *Id.* at paras. 8-12. There also was an opposition filed by Scripps Howard to a solution to a problem in connection with the tower height of a Sinclair subsidiary. *Id.* at paras. 9-10. Resolution of those proceedings which are pending on several fronts is tantamount to an armistice.

[27] Clarification is provided in the Reply of Scripps Howard Broadcasting Company and Four Jacks Broadcasting, Inc. to Mass Media Bureau's Comments on Joint Request for Approval of Settlement Agreement filed on April 28, 1995.

[28] The above *Partial Initial Decision* disposes of this case in its entirety. *Garden State Broadcasting Limited Partnership v. F.C.C.*, 996 F. 2d 386, 394 at n.10 (D.C. Cir. 1993). It shall become effective 50 days after its public release if exceptions are not filed within 30 days thereafter, unless the Commission elects to review the case on its own motion.47 C.F.R. §1.276(d).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Maclean Hunter Cable TV, Inc.	CUID Nos. MI0410,
River Rouge, Rockwood, Taylor,	MI0413, MI0414,
Berlin, and Garden City, Michigan	MI1038, MI1179

Benchmark Filings to Justify Cable Programming Service Rates

MEMORANDUM OPINION AND ORDER

Adopted: March 24, 1995; Released: March 28, 1995

By the Deputy Chief, Cable Services Bureau:

1. Here we consider complaints about the prices Maclean Hunter Cable TV, Inc. ("Maclean") was charging for its cable programming service ("CPS") tier in River Rouge, Michigan, CUID No. MI0410; Rockwood, Michigan, CUID No. MI0413; Taylor, Michigan, CUID No. MI0414; Berlin, Michigan, CUID No. MI1038; and Garden City, Michigan, CUID No. MI1179. Maclean has chosen to attempt to justify its prices through benchmark showings on FCC Form 393. This Order addresses the reasonableness of Maclean's prices only through May 14, 1994. At a later time we will issue a separate order addressing the reasonableness of the prices after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a complete and timely complaint. The filing of a complete and timely complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of- service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with complete and timely CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

4. Maclean asserts that its monthly CPS price in each franchise area is justified by its benchmark filing because this price is less than the maximum permitted charge. Upon review, we have found no apparent errors that would result in Maclean's actual CPS prices exceeding its maximum permitted CPS prices.[11]

5. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the complaints referenced herein against the cable programming service prices charged by Maclean Hunter Cable TV, Inc. in River Rouge, Michigan, CUID No. MI0410; Rockwood, Michigan, CUID No. MI0413; Taylor, Michigan, CUID No. MI0414; Berlin, Michigan, CUID No. MI1038; and Garden City, Michigan, CUID No. MI1179 ARE DENIED TO THE EXTENT INDICATED HEREIN.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Deputy Chief, Cable Service Bureau

[1] The findings in this Order do not in any way prejudge the reasonableness of the prices for CPS service after May 14, 1994 under our new rate regulations. However, to the extent the operator has sought to take advantage of the refund deferral period under the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (*"Second Order on Reconsideration"*), the maximum permitted CPS prices determined herein might also apply from May 15, 1994 until the date on which the operator implemented its CPS prices under the new regulations. *See* para. 3, *infra*.

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992) ("1992 Cable Act"); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] C.F.R. § 76.956(b).

[5] *Id.*

[6] Order in MM Docket No. 92-266, Implementation of Sections of the Cable Consumer Protection and Competition Act of 1992: Rate Regulation, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration*, 9 FCC Rcd at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

[11] This finding is based solely on the representations of the operator. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

V Cable, Inc. CUID No. OH1235
Russell, Ohio

Order Denying Jurisdiction

MEMORANDUM OPINION AND ORDER

Adopted: March 24, 1995; Released: March 28, 1995

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. In this Order we dismiss a complaint against the price V Cable, Inc. d/b/a Cablevision ("Cablevision") was charging for its cable programming service ("CPS") tier in Russell, Ohio, CUID No. OH1235, on the grounds that the complaint was untimely filed. The Commission regulates rates for CPS only upon the filing of a valid complaint. As explained below, our review revealed that this complaint was untimely filed. Therefore, the Commission lacks jurisdiction to consider this complaint, and accordingly it is dismissed.

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[1] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review a cable operator's prices for its cable programming service ("CPS") tier upon the filing of a valid complaint. The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[2] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[3] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[4]

3. The Commission's original rate regulations took effect on September 1, 1993.[5] The Commission subsequently revised its rate regulations effective May 15, 1994.[6] Operators with valid CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[7] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[8] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[9]

4. The only complaint against Cablevision's CPS rate in Russell, Ohio, CUID No. OH1235, was filed on March 3, 1994, and states that it was filed to object to a rate increase for the CPS tier offered by Cablevision. Under the Commission's rules, a complaint regarding a rate change for the CPS tier may be filed within 45 days from the date the complainant first receives a bill reflecting the rate change.[10] According to the complaint, the rate increase which the complainant challenges was the deletion of the Sports Channel from the CPS tier, the addition of the Sports Channel as a premium service, and the assessment of a $.26 surcharge for the Sports Channel. The complainant also stated that the charge first appeared on his February 25, 1994 bill, and that he was informed by a Cablevision representative over the telephone that it was effective January 1, 1994. However, Cablevision has submitted data in response to Commission letters which requested further clarification of Cablevision's amended showing[11] which shows that the deletion of the Sports Channel from the CPS tier occurred on September 1, 1993. Upon review of the entire record, we conclude that the deletion of the Sports Channel from the CPS tier occurred on September 1, 1993, rather than on January 1, 1994, as alleged by the complainant. Therefore, the filing of the complaint on March 3, 1994 was not timely and the complaint must be dismissed.

5. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the complaint filed March 3, 1994 against the cable programming service charge of V Cable, Inc. d/b/a Cablevision in Russell, Ohio, CUID No. OH1235 IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Deputy Bureau Chief
Cable Services Bureau

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[1] Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).
[2] 47 C.F.R. § 76.956.
[3] 47 C.F.R. § 76.956(b).
[4] *Id.*
[5] Order in MM Docket No. 92-266, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).
[6] *See* Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (*"Second Order on Reconsideration"*); 47 C.F.R. § 76.922(b).
[7] *See Second Order on Reconsideration* at 4190, paras. 150-152.
[8] *Id.*
[9] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration* at 4189 n.195.
[10] 47 C.F.R. § 76.953(b). Complaints about rates in effect on September 1, 1993 must be filed by February 28, 1994. 47 C.F.R. § 76.953(a).
[11] Letter from Chad G. Hume, Cablevision, to Peter G. Wolfe, FCC (Feb. 17, 1995); letter from Chad G. Hume, Cablevision, to Peter G. Wolfe, FCC (Mar. 21, 1995).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Star Cable Associates CUID No. TX1880
Boling, Texas

Order Denying Jurisdiction

MEMORANDUM OPINION AND ORDER

Adopted: March 24, 1995; Released: March 28, 1995

By the Deputy Chief, Cable Services Bureau:

1. In this Order we dismiss a complaint against the price Star Cable Associates ("Star Cable") was charging for its cable programming service ("CPS") tier in Boling, Texas, CUID No. TX1880, on the ground that the complaint concerns rates that are outside the jurisdiction and authority of this Commission. As explained below, the Commission regulates rates for CPS only, and then only upon filing of a valid complaint. Our review reveals that the complaint filed against Star Cable, while asserting that it challenges CPS rates, challenges only rates for basic service, not for CPS. The complaint therefore does not trigger the Commission's jurisdiction, and it is accordingly dismissed.

2. The Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act of 1992")[1] distinguishes among basic cable service, premium cable service, and cable programming service.[2] The basic service tier is the minimum package of cable service that a consumer can buy. Except in limited circumstances, the Commission does not have jurisdiction over rates for the basic service tier, and cannot act upon complaints concerning rates for that tier. Premium cable service consists of channels that are paid for individually (per-channel) or per-program. By statute, these channels are not subject to rate regulation.[3] CPS includes all video programming that is not on the basic service tier which the operator offers as a package of channels. Rates for CPS tiers are subject to regulation by the Commission in response to a valid complaint.

3. In this case, Star Cable filed a motion to dismiss the complaint stating that the "system does not offer cable programming service."[4] The channel line-up and rate card that Star Cable submitted and the bill that the complainant submitted support this assertion.

4. The complaint under consideration here was filed with the Commission on FCC Form 329. FCC Form 329 is used by subscribers or local franchising authorities wishing to lodge with the Commission a complaint about an operator's CPS rates. The form is entitled "Cable Programming Service Rate Complaint." While the form is designed for use in challenging CPS tier rates, the definition of CPS tier rates is not made clear on the face of the form and it is possible that someone might complete the form without understanding the difference between basic tier rates, premium service rates, and CPS tier rates.[5]

5. We have examined the complaint and Star Cable's motion, and we conclude that the complaint challenges only basic rates, not CPS rates. Although the complainant indicates that the rates challenged violate the Commission's rules, the specific information provided by the complainant indicates that only basic rates are at issue. When only basic rates are being challenged, the complaint should properly be brought to the attention of the local franchising authority in the first instance, and not filed with this Commission. If the complaint does in fact challenge CPS rates, the complainant may file a petition for reconsideration providing information adequate to support his challenge.

6. Accordingly, IT IS ORDERED, pursuant to Section 623(a)(2)(A) and (B) of the Communications Act of 1934, as amended, 47 U.S.C. §543(a)(2)(A) and (B), that the complaint filed prior to May 15,1994, against the cable programming service price charged by Star Cable Associates in Boling, Texas, CUID No. TX1880, IS DISMISSED.

7. This action is taken pursuant to delegated authority under Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Deputy Chief, Cable Services Bureau

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[1] Cable Television Consumer Protection and Competition Act, Pub. L. No. 102-385, 106 Stat. 1460 (1992) (Cable Act of 1992).
[2] Cable Act of 1992, Section 602, 47 U.S.C. § 522.
[3] Cable Act of 1992, Section 623(a)(1), 47 C.F.R. § 543(a)(1).
[4] Motion to Dismiss at 1 (Nov. 17, 1993).
[5] We note that operators have great latitude in determining what channels will be included in the basic tier; once the statutory minimum (broadcast and public educational and governmental access channels) is met, the operator may include as many additional channels in the basic tier as it wants, or it may move additional channels to a higher tier. Thus it is possible that a complainant might not clearly understand which channels are part of which tier.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Russell Cable Television Company Russell, Kansas	CUID No. KS0025
Classic Cable Anthony, Kansas	CUID No. KS0158
Douglas Cable Axtell, Kansas	CUID No. KS0306
USA Cablesystems, Inc. Carriere, Mississippi	CUID No. MS0395
Tennessee Cablevision Oak Ridge, Tennessee	CUID No. TN0045
Overton County Cable TV Livingston, Tennessee	CUID No. TN0220

Order Denying Jurisdiction

MEMORANDUM OPINION AND ORDER

Adopted: March 24, 1995; Released: March 28, 1995

By the Deputy Chief, Cable Services Bureau:

1. In this Order we dismiss complaints against the prices the above referenced operators were charging for their cable programming service ("CPS") tiers in the above referenced communities, on the ground that the complaints concern rates that are outside the jurisdiction and authority of this Commission. As explained below, the Commission regulates rates for CPS only, and then only upon filing of a valid complaint. Our review reveals that the complaints filed against the operator, while asserting that they challenge CPS rates, challenge only rates for basic service, not for CPS. The complaints therefore do not trigger the Commission's jurisdiction, and they are accordingly dismissed.

2. The Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act of 1992")[1] distinguishes among basic cable service, premium cable service, and cable programming service.[2] The basic service tier is the minimum package of cable service that a consumer can buy. Except in limited circumstances, the Commission does not have jurisdiction over rates for the basic service tier, and cannot act upon complaints concerning rates for that tier. Premium cable service consists of channels that are paid for individually (per-channel) or per-program. By statute, these channels are not subject to rate regulation.[3] CPS includes all video programming that is not on the basic service tier which the operator offers as a package of channels. Rates for CPS tiers are subject to regulation by the Commission in response to a valid complaint.

3. In these cases, the operators have indicated that as of September 1, 1993, they only offered one tier of service in the communities addressed in this Order. The channel line-ups and rate cards that the operators have submitted support their assertion.

4. The complaints under consideration here were filed with the Commission on FCC Form 329. FCC Form 329 is used by subscribers or local franchising authorities wishing to lodge with the Commission a complaint about an operator's CPS rates. The form is entitled "Cable Programming Service Rate Complaint." While the form is designed for use in challenging CPS tier rates, the definition of CPS tier rates is not made clear on the face of the form and it is possible that someone might complete the form without understanding the difference between basic tier rates, premium service rates, and CPS tier rates.[4]

5. We have examined the complaints and the operators' responses, and we conclude that the complaints challenge only basic rates, not CPS rates. Although the complainants indicate that the rates challenged violate the Commission's rules, the specific information provided by the complainants indicates that only basic rates are at issue. When only basic rates are being challenged, the complaint should properly be brought to the attention of the local franchising authority in the first instance, and not filed with this Commission. If the complaints do in fact challenge CPS rates, the complainants may file a petition for reconsideration providing information adequate to support their challenge.

6. Accordingly, IT IS ORDERED, pursuant to Section 623(a)(2)(A) and (B) of the Communications Act of 1934, as amended, 47 U.S.C. §543(a)(2)(A) and (B), that the complaints filed prior to May 14, 1994, against the cable programming service prices charged by Russell Cable Television Company, in Russell, Kansas, CUID No. KS0025; Classic Cable, in Anthony, Kansas, CUID No. KS0158; Douglas Cable, in Axtell, Kansas, CUID No. KS0306; USA Cablesystems, Inc., in Carriere, Mississippi, CUID No. MS0395; Tennessee Cablevision, in Oak Ridge, Tennessee, CUID No. TN0045; and Overton County Cable TV, in Livingston, Tennessee, CUID No. TN0220 ARE DISMISSED.

7. This action is taken pursuant to delegated authority under Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321.

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[1] Cable Television Consumer Protection and Competition Act, Pub. L. No. 102-385, 106 Stat. 1460 (1992) (Cable Act of 1992).
[2] Cable Act of 1992, Section 602, 47 U.S.C. § 522.
[3] Cable Act of 1992, Section 623(a)(1), 47 U.S.C. § 543(a)(1).
[4] We note that operators have great latitude in determining what channels will be included in the basic tier; once the statutory minimum (broadcast and public educational and governmental access channels) is met, the operator may include as many additional channels in the basic tier as it wants, or it may move additional channels to a higher tier. Thus it is possible that a complainant might not clearly understand which channels are part of which tier.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Deputy Chief, Cable Services Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In re:

Consolidated Cablevision of California — CSR- 4497-T

Request for Clarification or Waiver of Section 76.502 of the Commission's Rules

MEMORANDUM OPINION AND ORDER

Adopted: May 1, 1995 **Released: May 18, 1995**

By the Cable Services Bureau:

1. On April 3, 1995, Consolidated Cablevision of California ("CCC") filed a request for clarification, or in the alternative a waiver, of 47 C.F.R. §76.502, the Commission's anti-trafficking rule, for certain cable systems in California.[1] CCC seeks clarification that an involuntary court ordered transfer of cable systems to a receiver does not violate the anti-trafficking rule. CCC requests a waiver in case the Commission decides that the receivership would trigger the anti-trafficking restriction. The petition is unopposed.

2. Section 76.502 of the Commission's Rules implements Section 617 of the Communications Act, as amended, which, with certain exceptions, restricts the ability of a cable operator to sell or otherwise transfer ownership in a cable system within a 36 month period following either the acquisition or initial construction of the system.[2] However the commission was given broad discretion to grant waivers of the holding requirement.[3]

3. The three-year holding requirement rule, and its underlying statutory provision, are aimed at restricting transactions and other transfers that are likely to adversely affect cable rates or service in the local franchise area, and are not intended to inhibit investment in the cable industry or delay or disrupt legitimate transactions.[4] Recently, the Commission stated that unless a transaction raises serious concerns on its face or any objections filed provide other public interest bases for concern, requests for waiver of the three-year holding requirement will generally be looked on favorably.[5]

4. The 1992 Cable Act expressly exempts from the restriction: "(1) any transfer of ownership interest in any cable system which is not subject to Federal income tax liability; (2) any sale required by operation of any law or any act of any Federal agency, any State or political subdivision thereof, or any franchising authority; and (3) any sale, assignment, or transfer, to one or more purchasers, assignees, or transferees controlled by, controlling, or under common control with, the seller, assignor, or transferor.[6] The Commission has interpreted the exemptions to apply to changes of control that are the result of tax exempt transactions, involuntary transfers and transfers involving municipally owned cable systems, and *pro forma* transfers or assignments.[7]

5. CCC states that in March 1990, it acquired cable systems serving the noted California communities. Subsequently, CCC defaulted in its loan payments and Marine Midland Bank (the "bank" or "lender") sought a judgment in the Superior Court of the State of California against CCC for judicial foreclosure of the Bank's collateral, which included security interests in the property used in connection with the operation of the cable television systems. CCC explains that pursuant to a stipulation between and among the bank and the borrowers dated April 30, 1993, and approved by the Court on July 26, 1993, the bank agreed to forbear from exercising its right to obtain judgment and proceed to foreclosure so long as CCC and other borrowers performed certain obligations. According to CCC, this arrangement permitted it to continue to own and operate its systems but provided for appointment of a receiver should it fail to comply. CCC failed to comply with its obligations and the Bank moved for appointment of a receiver. On November 16, 1993, a receiver was appointed which had the duty and authority to sell CCC's cable systems as a going concern. The receiver located a buyer for the systems and has since entered into an agreement for sale of CCC's systems to Continental Cablevision of Sierra Valleys, Inc.

6. Because of the nature of the receivership and the events which have transpired since the court action in 1992, CCC requests clarification that: (1) a transfer triggering a new three-year holding period has not occurred or (2) if such a transfer has occurred, it is exempt from the

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[1] The California cable systems involved in the involuntary transfer include: Reedley (CA0995); Kingsburg (CA0996); Dinuba (CA0997); Selma (CA0998); Sanger (CA0999); Fowler (CA1000); Parlier (CA1275); Dos Palos (CA1094); Firebaugh (CA1095); Kerman (CA1096); Mendota (CA1097); San Joaquin (CA1098); Unincorporated Fresno County (CA1338); and Unincorporated Madera County (applied for).

[2] 47 C.F.R. § 76.502; Section 617 of the Communications Act of 1934, as amended, 47 U.S.C. § 537.

[3] 47 U.S.C. § 537(d); *see also Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992, (Horizontal and Vertical Ownership Limits, Cross-Ownership Limitations and Anti-Trafficking Provisions), First Report and Order*, ¶ 78, 8 FCC Rcd 6828, 6839 (1993), *recon. granted in part and denied in part, Memorandum Opinion and Order on Reconsideration of the First Report and Order*, 10 FCC Rcd _____, FCC 95-21, released January 30, 1995 (MM Docket No. 92-264); 47 C.F.R. § 76.502(g).

[4] *See Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992, (Horizontal and Vertical Ownership Limits, Cross-Ownership Limitations and Anti-Trafficking Provisions), First Report and Order*, ¶ ¶ 11, 21 & 36, 8 FCC Rcd at 6830-31, 6833; 47 U.S.C. § 537.

[5] *Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992, (Horizontal and Vertical Ownership Limits, Cross-Ownership Limitations and Anti-Trafficking Provisions), Memorandum Opinion and Order on Reconsideration of the First Report and Order*, ¶ 79, 10 FCC Rcd _____, FCC 95-21, released January 30, 1995 (MM Docket No. 92-264).

[6] 47 U.S.C. §537(c).;

[7] *See Report and Order*, 8 FCC Rcd at 6837-39.

three-year holding requirement pursuant to Section 617(c) of the 1992 Cable Act and Section 76.502(e)(2) of the Commission's rules. CCC argues that a transfer triggering the anti-trafficking restrictions has not occurred because despite the appointment of the receiver, no formal change in ownership of the cable system has occurred either through an assignment or transfer of control of CCC, as the owner company. CCC also asserts that it retains title to the assets comprising the systems and there has been no change in the ownership (equity) interests in CCC as a company. CCC maintains that in this instance, a receiver has been appointed pursuant to court action to manage the cable systems and preserve the system assets as a going concern pending sale to a third party. CCC notes, however, that even though there has been no change in legal ownership of the systems and no transfer of control of the systems' owner, the Commission may find that the appointment of the receiver is an event technically capable of triggering the application of the three year holding period. If this is the case, CCC asks that the Commission clarify that this is an exempt change under the statute and the Commission's rules. As a transfer required by an "act, order or decree of ... any state or political subdivision thereof,"[8] CCC maintains that the imposition of the receiver in 1993 would not trigger commencement of a new three year holding period since the time of ownership would be measured from its acquisition in 1990.

7. CCC argues in the alternative that, if the Commission disagrees with its interpretation of the anti-trafficking exemption, then a waiver of the rules is necessary in this instance. CCC explains that both the Act and the implementing provisions in Section 76.502(g) of the Commission's rules provide for waivers of the three year holding period in cases of financial hardship. The operator argues that a receivership resulting from a loan default is similar to a bankruptcy in which the Commission previously has waived the three year holding period.[9] CCC further argues that the appointment of a receiver, unlike actual changes in system ownership, does not constitute "trafficking" or lead to the profit-taking the Act sought to prevent.

8. CCC concludes by stating that regardless of how the Commission views the circumstances, the events that transpired were not motivated by "profiteering." Rather, the State Court intervened in these circumstances to preserve an ongoing business for eventual sale. CCC argues that delaying the court-ordered disposition of property for an additional three year holding period would serve neither the system's subscribers, the borrowers, the bank, or the public interest in general.

9. We find that the receivership and subsequent sale of the cable properties to Continental Cablevision as a sale required by operation of law fitting within the exemption set forth in Section 617(c)(2) of the 1992 Cable Act.[10] We believe a receivership is, in effect, substantially similar to a bankruptcy proceeding which we consider to be the kind of involuntary transfer that Congress envisioned when it wrote the anti-trafficking exemptions.[11] Additionally, because of the involuntary nature of the events, this is not a case where Congress' concerns about profit-taking are involved. Finally, though we need not reach the issue since we resolve the matter in favor of the cable operator, we note that CCC would have qualified for a waiver because the 1992 Cable Act directs the Commission to grant waivers in cases of default, foreclosure and other financial distress.[12] Based on the totality of the circumstances presented in CCC's request, we find that the petition is consistent with the Section 617, and that the involuntary transfer and impending sale of CCC's cable systems is in the public interest.

10. In view of the above, IT IS DECLARED that, the request for clarification of 47 C.F.R. §76.502 as stated by Consolidated Cablevision of California and affirmed by the Commission IS GRANTED.

11. This action is taken by the Chief, Cable Services Bureau pursuant to authority delegated by Section 0.321 of the Commission's rules.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

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[8] *See* 47 C.F.R. §76.502(e)(2).

[9] CCC cites *Application of King Kable, Inc.*, DA 93-156 (rel. February 9, 1993) as support for this proposition.

[10] The anti-trafficking restriction of the 1992 Cable Act shall not apply to "any sale required by operation of any law or any act of any Federal agency , any State or political subdivision thereof, or any franchising authority...." *See* 47 U.S.C. §617(c)(2).

[11] *See Report and Order*, 8 FCC Rcd 6837-39 at para. 67.

[12] *See id* at 6839.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 95-67

In the Matter of

Amendment of Section 73.202(b), RM-8624
Table of Allotments,
FM Broadcast Stations.
(Greenfield and Stockton,
Missouri)

NOTICE OF PROPOSED RULE MAKING

Adopted: May 8, 1995; Released: May 18, 1995

Comment Date: July 10, 1995
Reply Comment Date: July 25, 1995

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by KYOO Communications ("petitioner"), requesting the allotment of Channel 299A at Stockton, Missouri, and deletion of vacant Channel 299A at Greenfield, Missouri. Petitioner submitted information in support of the proposal and stated its intention to apply for Channel 299A at Stockton, if allotted.

2. In support of its request, petitioner states that Channel 299A at Stockton will provide a first aural service. Stockton has a population of 1,579 people and is a community far removed from any metropolitan area. Stockton is the county seat of Cedar County which has a population of 12,093 people. According to petitioner, there is ample room for an antenna site that will provide a 70 dBu service contour over the entire community with no line of sight problems. Petitioner, in support of its request to delete Channel 299A at Greenfield, argues that the community of Greenfield can not financially support a radio station. In the past, licensees attempted to program and market the Greenfield station as a Springfield, Missouri facility in an attempt to earn additional revenue.[1] However, since the Greenfield station, as a Class A facility, could not provide full service to Springfield, the additional revenue needed for the station to survive never materialized. The Springfield area has since seen an explosion of new broadcast stations and facility upgrades that provide competitive services to that market, making the economic viability of an FM station operating in Greenfield practically impossible.

3. We believe petitioner's request warrants consideration because the proposed allotment at Stockton would provide the community with its first local broadcast service. Channel 299A can be allotted to Stockton in compliance with the Commission's spacing requirements provided there is a site restriction 8.5 kilometers (5.3 miles) west of the community.[2] The site restriction will prevent a short spacing to Station KCLQ, Channel 300C2, Lebanon, Missouri. To accommodate Channel 299A at Stockton, it is necessary to delete vacant Channel 299A at Greenfield, Missouri.[3] We shall seek comments as to whether we should delete Channel 299A at Greenfield, Missouri, to accommodate the allotment of Channel 299A at Stockton, Missouri. If an expression of interest is filed during the comment cycle in this proceeding, we would retain Channel 299A in Greenfield and open a filing window for the channel.[4] It is Commission policy not to delete a channel in which interest has been expressed. However, if no interest is expressed for retention of a channel in Greenfield, we shall delete Channel 299A to accommodate the allotment at Stockton.

4. In view of the above, the Commission believes it is in the public interest to propose amending the FM Table of Allotments, Section 73.202(b) of the Commission's Rules with respect to the following communities:

	Channel No.	
City	Present	Proposed
Greenfield, Missouri	299A	---
Stockton, Missouri	---	299A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **July 10, 1995**, and reply comments on or before **July 25, 1995**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

William J. Pennington, III
5519 Rockingham Road-East
Greensboro, North Carolina 27407

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[1] We note that in 1981, the licensee of Station KRFG, Channel 228A, John A. Watkins, President of Watkins Investment Company, requested reallotment of Channel 228A from Greenfield, Missouri, to Springfield, Missouri, and modification of its license to specify Springfield as the community of license. *See* BC Docket 81-503. The reallotment was denied as John A. Watkins withdrew the proposal because the rules, at that time, required the channel be made available to competing applicants.

[2] The coordinates for Channel 299A at Stockton are 37-42-22 and 93-53-21.

[3] The *Report and Order* in MM Docket 92-49 substituted Channel 299A for Channel 228A at Greenfield, Missouri, and modified the license for Station KXBR to specify operation on Channel 299A. *See* 8 FCC Rcd 734 (1993). However, on April 6, 1994, the Commission cancelled the license for Station KXBR and deleted the call sign.

[4] A staff engineering analysis indicates that Channel 265A could be considered as a substitute channel at Greenfield, Missouri, should interest be expressed in retention of a channel in the community.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re:

Complaint of Christian Faith Broadcast, Inc. CSR-4471-M

Against Adelphia Cablevision Associates, LP, Lorain Cable Television, Inc., and Multi-Channel TV Cable Company d/b/a Adelphia Cable Communications

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: May 4, 1995; Released: May 18, 1995

By the Cable Services Bureau:

I. INTRODUCTION

1. On February 21, 1995, Christian Faith Broadcast, Inc. ("CFB"), licensee of WGGN-TV (Ind., Channel 52) Sandusky, Ohio, filed a complaint against Adelphia Cablevision Associates, LP, Lorain Cable Television, Inc., and Multi-Channel TV Cable Company d/b/a Adelphia Cable Communications ("Adelphia"), operator of a cable system serving Mansfield, Ohio, pursuant to Section 76.61 of the Commission's rules, on the grounds that Adelphia refused to carry WGGN-TV on its Mansfield system even though WGGN-TV is a qualified local commercial television station. Adelphia filed an opposition on March 23, 1995, to which CFB responded on April 4, 1995.

2. Sandusky, WGGN-TV's city of license, is in the Cleveland, Ohio ADI. Adelphia's Mansfield cable system is located in Richland County, Ohio which is also in the Cleveland ADI.

II. SUMMARY OF PLEADINGS

3. CFB alleges in its complaint that after resolving concerns over WGGN-TV's signal strength over the Adelphia system headends by agreeing in May 1994 to provide a special antenna and amplifier at the Mansfield headend, it requested carriage on Adelphia's Mansfield system on November 22, 1994. On December 22, 1994, Adelphia responded in a letter stating that with respect to the Mansfield system that it "was verifying the signal quality at the ... Mansfield headend location[s]."[1] CFB contends that because Adelphia's Mansfield system consists of 38 activated channels, it is obligated to carry up to 13 local commercial television stations, but currently only carries 11.[2] CFB notes that WGGN-TV's carriage rights are not affected by Adelphia's carriage of a number of stations licensed to communities outside the Cleveland ADI (non-local stations). CFB further asserts that signal strength concerns cannot be a bar to carriage because it has already agreed to provide equipment to satisfy these concerns. CFB contends that despite the long negotiating period, Adelphia has not identified a time at which it will reach a decision concerning signal carriage, and therefore, that Adelphia's actions amount to a denial of carriage.

4. In its opposition, Adelphia argues that, contrary to CFB's assertions, it has not refused to carry WGGN-TV. Instead, Adelphia contends that it has engaged in "good faith negotiations" with CFB and that such negotiations were continuing at the time of CFB's filing. Adelphia claims that in light of the fact that Adelphia is currently in the process of rebuilding its entire plant serving Mansfield, with activation of new plant beginning in June or July of 1995, the parties orally agreed that Adelphia would commence carriage of WGGN-TV around that time, with customers gaining access to the station at the time the customers are switched over to the new system. Adelphia notes that because the Mansfield system is at full channel capacity, in order to carry WGGN-TV immediately it would have to breach one of its existing programming contracts with one of the services currently being carried. In addition, Adelphia comments that since the filing of CFB's complaint, CFB has been unwilling to continue negotiations regarding carriage.

5. In its reply to Adelphia's opposition, CFB argues that it never orally agreed to Adelphia's proposal that WGGN-TV be carried beginning in June or July, 1995. In addition, CFB states that, contrary to Adelphia's contentions, it did in fact inform the operator that it would be filing the subject complaint. CFB explains that Adelphia's proposal was unacceptable because if carried on Adelphia's Mansfield system beginning in June or July, 1995, WGGN-TV's program service would only be available to about 15 percent of the system subscribers, with additional subscribers not being switched over for approximately two years.

III. DISCUSSION

6. We uphold WGGN-TV's complaint against Adelphia. It is undisputed that WGGN-TV is a qualified local commercial television station entitled to be carried on Adelphia's Mansfield system under 47 C.F.R. § 76.56(b). However, Adelphia claims that although it has agreed to carry WGGN-TV beginning sometime around June or July, 1995, it is currently unable to carry the station due to channel capacity constraints. Accordingly, the issue before us is whether these alleged capacity constraints allow Adelphia to delay carriage of WGGN-TV until the Mansfield system is rebuilt. We find that WGGN-TV's must-carry rights are immediate and that Adelphia is not entitled to further delay carriage of WGGN-TV.

7. Section 76.56(b)(2) of the Commission's Rules, requires that cable systems with more than 12 useable activated channels devote up to one third of the channels to carriage of local commercial television stations. As CFB

[1] CFB notes that at the time of this filing, Adelphia had given commitments and service commencement dates to CFB for every other Adelphia cable system, except Mansfield.
[2] *See* 47 C.F.R. § 76.56(b)(2).

correctly argues, the Commission's Rules require that up to 13 of Adelphia's channels must be devoted to the transmission of local commercial television stations.[3] CFB alleges, and Adelphia does not refute, that Adelphia is currently carrying only 11 local commercial television stations on its 38-channel Mansfield system. It is also unrefuted that Adelphia is carrying other stations which do not have must-carry rights under 47 C.F.R. § 76.56(b)(2). Adelphia's argument that it is currently unable to carry WGGN-TV because to do so it would have to breach existing programming contracts is unconvincing. The Commission specifically addressed the issue of conflicts between carriage of a must-carry station and prior agreements between cable operators and cable programming services in its *Must Carry Order*, stating that the "clear statutory right of carriage ... applies prospectively notwithstanding the existence of prior agreements between cable operators and cable programming services."[4] The fact that Adelphia may have to drop television broadcast stations or satellite delivered programming services that do not have mandatory carriage rights is not grounds to further delay WGGN-TV's right to mandatory carriage. We conclude that Adelphia is not currently utilizing the required one third of its capacity for the carriage of must-carry stations and that it has failed to provide just cause for delaying carriage of WGGN-TV.

IV. ORDER

8. Accordingly, IT IS ORDERED, that the Complaint filed February 21, 1995 by Christian Faith Broadcast, Inc. IS GRANTED in accordance with Section 614(d)(3) (47 U.S.C. 534) of the Communications Act of 1934, as amended.

9. IT IS FURTHER ORDERED that Adelphia Cablevision Associates SHALL CARRY the signal of WGGN-TV on its cable television system serving Mansfield, Ohio in compliance with this Order, within sixty (60) days of its release date. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Cable Services Bureau

[3] *Id.* In n.78 to its *Report and Order*, MM Docket No. 92-259, 8 FCC Rcd 2965, 2972 (1993) (*"Must Carry Order"*), the Commission explained that to determine how many channels must be devoted to the transmission of local commercial signals (one third of the system's usable activated channels), operators may round to the nearest whole number.

[4] *Must Carry Order*, 8 FCC Rcd at 2988.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 95-68

In the Matter of

Amendment of Section 73.202(b),

Table of Allotments, RM-8629
FM Broadcast Stations.
(Berlin, Maryland)

NOTICE OF PROPOSED RULE MAKING

Adopted: May 11, 1995; Released: May 18, 1995

Comment Date: July 10, 1995
Reply Comment Date: July 25, 1995

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by John P. Gillen ("petitioner") seeking the allotment of Channel 235A to Berlin, Maryland, as that community's second FM broadcast service. Petitioner submitted information in support of the proposal and stated his intention to file an application for Channel 235A if the channel is allotted to Berlin.

2. We believe petitioner's proposal warrants consideration. Channel 235A can be allotted to Berlin, Maryland, in compliance with the minimum distance separation requirements of the Commission's Rules provided there is a site restriction 10.8 kilometers (6.7 miles) southeast of the community.[1] The site restriction will prevent a short spacing to Station WDSD, Channel 234B, Dover, Delaware.

3. In view of the fact that the proposed allotment would provide a second local service to Berlin, Maryland, the Commission believes it would serve the public interest to propose amending the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Berlin, Maryland	280A	235A, 280A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

[1] The coordinates for Channel 235A at Berlin are 38-13-45 and 75-10-58.

5. Interested parties may file comments on or before **July 10, 1995**, and reply comments on or before **July 25, 1995**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

John P. Gillen
12314 Dixie Drive
Bishopville, Maryland 21813

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND

the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

OPERATOR COMMUNICATIONS, INC.
dba ONCOR COMMUNICATIONS, INC.
File No. ENF-95-02

Investigation of Rates and Charges
for Interstate Operator Services

MEMORANDUM OPINION AND ORDER

Adopted: May 12, 1995; Released: May 19, 1995

By the Acting Chief, Enforcement Division, Common Carrier Bureau:

I. INTRODUCTION

1. Operator Communications, Inc., an operator service provider (OSP), dba Oncor Communications, Inc., (Oncor) has requested clarification of an information disclosure requirement that was imposed in the Bureau's *Memorandum Opinion and Order and Order to Show Cause ("Show Cause Order")* in this proceeding.[1] Oncor also has requested four weeks additional time within which to effect such requirement. For reasons specified herein, we deny both the requested interpretation of our order and the requested extension of time.

II. BACKGROUND

2. The Telephone Operator Consumer Services Improvement Act of 1990 (TOCSIA)[2] was enacted to protect consumers from unfair and deceptive practices relating to their use of operator services to place interstate telephone calls and to ensure that consumers have the opportunity to make informed choices in making such calls.[3] TOCSIA therefore imposed various information disclosure and operating requirements on OSPs and charged the Federal Communications Commission with the responsibility of monitoring and regulating their activities. TOCSIA provides that if, upon review by the Commission, the rates and charges filed by any OSP appear to be unjust and unreasonable, the Commission may require such OSP, *inter alia*, to announce that its rates are available on request at the beginning of each call.[4]

3. The Commission's expectation in 1992 was that its branding requirements and consumers' ability to exercise choice and to dial-around an OSP whose rates appeared excessive would "help counter any residual market impact of the diminishing segment of the operator service industry that charges unusually high rates."[5] This expectation was based on the premise that, given the availability of sufficient information, consumers would make informed choices. However, the high level of Oncor's rates and the number of complaints directed against such rates indicated that additional branding requirements should be imposed on it in order that consumers might be informed more fully of Oncor's interstate OSP rates and charges. Therefore, the *Show Cause Order* directed Oncor to disclose as soon as possible, but no later than seven days from the release thereof, the following additional information to consumers with regard to its interstate operator services to ensure that consumers may more fully be informed of applicable rates and charges and are better able to make informed choices when placing operator service calls:

> "The rates that you will be charged for this call are available on request. Please dial [insert number] to obtain these rates."[6]

Further, if, after 30 days after the release of that order, Oncor did not reduce its rates to 115 percent of AT&T's rates, Oncor was directed to show cause why consumers should not be alerted that (1) its rates might be higher than the consumer might think; (2) its rates were under investigation by the FCC; and/or (3) the consumer might be assessed a surcharge of up to $10.00 per call.

III. ONCOR'S MOTION

4. Oncor has requested clarification of the customer notification requirement that the Bureau ordered and an extension of time, until June 1, 1995, to comply therewith.[7] While Oncor is prepared to comply with the first sentence of the requirement quoted in paragraph 3, above, it contends that the Commission lacks authority to impose the dialing instruction requirement contained in the second sentence. According to Oncor, "[u]ntil the Commission determines the lawfulness of Oncor's rates based on the record to be established in this proceeding, its authority to require interim disclosures is limited to those disclosures specifically provided for in TOCSIA."[8] In support of its Motion, Oncor contends that nothing in the Communications Act or the Commission's Rules authorizes a dialing instruction to be required or to require anything more than an announcement that the rates a consumer will be charged for a call are available upon request. Oncor further contends that such branding requirement is an interim or merely temporary requirement pending a demonstration that a carrier's rates are just and reasonable. Notwithstanding the Bureau's determination that the high level of complaints directed against Oncor's rates and charges warranted imposing additional branding requirements, Oncor contends that, because aggregators must post the OSP's toll-free telephone number on or near the telephone instrument in full view of consumers, the

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[1] Memorandum Opinion and Order and Order to Show Cause, FCC Rcd. (Com. Car. Bur.1995), DA 95-942 (released April 27, 1995).
[2] 47 U.S.C. § 226.
[3] *See Show Cause Order* at para. 3.
[4] 47 U.S.C. § 226(h)(2).
[5] *See Show Cause Order* at para. 12, *citing* Final Report of the Federal Communications Commission Pursuant to the Telephone Operator Consumer Services Improvement Act of 1990 (Nov. 13, 1992).
[6] (footnote omitted) *See Show Cause Order* at Appendix C.
[7] Motion for Clarification and For Extension of Time, filed May 3, 1995 ("Motion").
[8] *Id.* at 6.

dialing requirement is unnecessarily duplicative. Oncor further contends that imposing such requirement on it is also unnecessarily punitive and prejudges the outcome of the rate investigation just commenced. Finally, Oncor states that, without "unduly interfering with completion of other ongoing projects ... ", it can effect the additional customer rate disclosure announcement expressly authorized in TOCSIA in approximately four weeks.[9]

IV. DISCUSSION

5. Under Section 226, if the Commission determines that rates and charges in an OSP's informational tariff appear to be unjust or unreasonable, it may require such OSP to announce that its rates are available on request at the beginning of each call. Having made such a determination about Oncor's rates, the Bureau, by directing Oncor in the *Show Cause Order* to implement additional branding within seven days,[10] intended to provide the earliest practicable relief to consumers faced with the prospect of using Oncor's services by requiring Oncor not only to tell consumers that its rates are available but to further advise them how to obtain them. We find no inconsistency between that specific brand and the notification authority conferred by TOCSIA. The fact that Oncor's toll-free telephone number is, or may be, posted on or nearby the telephone instrument by the owner is insufficient in cases where, as here, the Commission has determined that Oncor's rates appear to be unjust or unreasonable. In such circumstances, consumers should be given reasonable opportunity to learn what rates and premises-imposed fees or aggregator surcharges they must pay to Oncor before calls are completed. This is so whether or not those rates and charges are formally designated for investigation by the Commission or the OSP is required to demonstrate their reasonableness.[11]

6. Contrary to Oncor's contentions, in enacting TOCSIA, Congress made clear that the statutory requirements for OSPs were *minimum* requirements and that the Commission's powers under other sections of the Act were not to be construed as altered thereby.[12] *See* H.R. Rep. No. 213, 101st Cong., 1st Sess. 10 (1989) ("The Committee expects that the Commission [will] treat the requirements of this Section as *minimum actions and take whatever further measures that are necessary or appropriate*." (emphasis added)). Indeed, TOCSIA, itself, expressly provides, *inter alia*, that each OSP "shall, at a minimum ... disclose immediately to the consumer, upon request and at no charge to the consumer -- (i) a quote of its rates or charges for the call ...."[13] Further, Section 4(i) of the Act, has always expressly authorized the Commission to "perform any and all acts... and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions."[14] Thus, consistent with Congress' intent, the FCC has ample authority under the Communications Act to impose the additional branding and information disclosures ordered in the *Show Cause Order*.

7. Finally, we find that Oncor has not shown good cause for its request to extend, until June 1, 1995, the time within which itmust effect the branding requirement ordered in the *Show Cause Order*. It is the policy of the Commission that extensions of time shall not be routinely granted. *See* Section 1.46(a) of the Commission's Rules, 47 C.F.R. § 1.46(a). Oncor has not shown that it could not come into compliance with the branding requirement or make the required information disclosures within the time allowed.[15] Nor has Oncor shown that it is technically incapable of effecting the required additional branding promptly with regard to all of the relevant phones. If Oncor is able to show that it cannot implement the disclosure requirements for all phones at the same time, it should do what it is able to immediately and, simultaneously, submit a plan for staggered implementation for our approval.

V. CONCLUSION

8. In light of the foregoing, we conclude that Oncor has not justified either its request for clarification of our *Show Cause Order* or its request for an extension of time to comply therewith. Accordingly, its motion is denied.

VI. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i) and (j), and 226 of the Communications Act of 1934, as amended, §§ 151, 154(i),(j), 226, and authority delegated under 47 C.F.R. § 0.291, that the Motion for Clarification and for Extension ofTime filed by Operator Communications, Inc., dba Oncor Communications, Inc., on May 3, 1995, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gregory A. Weiss
Acting Chief, Enforcement Division
Common Carrier Bureau

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[9] *Id.*, Affidavit of Bruce Campbell at 2.

[10] *See Show Cause Order* at para. 14, Appendix C.

[11] The requirement that an OSP announce that its rates are available on request at the beginning of each call may be imposed in either case. The language of the statute clearly permits a disjunctive, as well as conjunctive, interpretation.47 U.S.C. § 226(h)(2) (FCC may require OSP "to do *either* or both ...") (emphasis added).

[12] 47 U.S.C. § 226(i) (Nothing in Section 226 shall be construed to alter obligations, powers, or duties of common carriers or the Commission under other sections of this Act).

[13] (emphasis added) 47 U.S.C. § 226(b)(1)(C)(i).

[14] 47 U.S.C. § 154(i).

[15] In addition to the seven days Oncor was afforded by the *Show Cause Order*, we informally advised Oncor that we would not take further enforcement action against it during the pendency of its motion.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MCI TELECOMMUNICATIONS
CORPORATION,
Complainant and Counterclaim Defendant,

v. File No. E-92-107

AT&T CORP.,
Defendant and Counterclaimant.

ORDER

Adopted: May 12, 1995; Released: May 19, 1995

By the Chief, Formal Complaints and Investigations Branch, Enforcement Division, Common Carrier Bureau:

1. MCI Telecommunications Corporation (MCI) has filed the above-captioned formal complaint against AT&T Corp. (AT&T), alleging that AT&T's Contract Tariff F.C.C. No. 21 violated Sections 201(b) and 202(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 201(b), 202(a). AT&T filed an answer denying the allegations and moved to dismiss the complaint.

2. MCI has subsequently filed a "Motion for Voluntary Dismissal" of its complaint, with prejudice, stating that it no longer wishes to pursue this action.

3. We are satisfied that granting the Motion will serve the public interest by eliminating the need for further litigation and the expenditure of further time and resources by the parties and by the Commission.

4. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i), 4(j), and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 208, and the authority delegated under Section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, that the Motion for Voluntary Dismissal IS GRANTED WITH PREJUDICE and the proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Thomas D. Wyatt
Chief, Formal Complaints and
Investigations Branch
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 91-35

In the Matter of

Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation — ENF 95-5

MEMORANDUM OPINION AND ORDER

Adopted: May 15, 1995; Released: May 19, 1995

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On February 27, 1995, Sprint Communications Co. ("Sprint") petitioned the Commission to waive application of Section 64.1301 of its rules, 47 C.F.R. § 64.1301, regarding interstate access code call compensation. Specifically, Sprint seeks authority to pay compensation to competitive payphone owners ("PPOs") on a per-call basis, in accordance with the Commission's expressed preference.[1] Four parties filed comments or replies in response to the petition.[2] No party opposed the petition. For the reasons discussed below, we grant Sprint's petition and allow it to begin paying per-call compensation on July 1, 1995.

II. BACKGROUND

2. In April 1992, the Commission adopted the *Second Report and Order* in CC Docket No. 91-35, which established a mechanism for interexchange carriers ("IXCs") to compensate PPOs for originating interstate access code calls. The Commission expressed its preference at that time for a per-call compensation mechanism because it would encourage PPOs to place their payphones in locations that are likely to generate the most calls. The Commission found, however, that it was not technically feasible to implement such a mechanism at that time.[3] Instead, in the interests of implementing a compensation mechanism "quickly and at relatively little cost," the Commission adopted on an interim basis a compensation rate of $6 per competitive payphone per month. At the same time, the Commission directed the Chief, Common Carrier Bureau, "to explore whether and how a per-call compensation mechanism might be implemented in the future."[4]

3. The Commission further concluded in the *Second Report and Order* that flat-rate compensation obligations should be limited to those IXCs that both (1) earn annual toll revenues in excess of $100 million, and (2) provide live or automated operator services. The Commission determined that each IXC's share of the monthly charge of $6 per payphone would be computed by calculating its relative share of total toll revenues received by IXCs required to pay compensation, and multiplying that percentage by $6.[5]

III. PETITION FOR WAIVER AND COMMENTS

A. The Petition

4. Sprint seeks waiver of Section 64.1301 of the rules to allow it to pay compensation based on the actual number of access code calls it receives from each competitive payphone at a rate of $.25 per call. According to Sprint, it currently is in aposition to track and compensate individual 10XXX and 1-800 access code calls from competitive payphones in equal access areas. In support of its waiver request, Sprint notes that the Commission granted a similar waiver to AT&T.[6]

B. Comments and Replies

5. Allnet supports Sprint's waiver petition and asks the Commission to allow any compensation payor to pay on a per-call basis without the need of filing for a waiver.[7] APCC supports Sprint's waiver petition, as long as the grant of the waiver is on a temporary basis pending completion of a rulemaking to establish a comprehensive per-call compensation mechanism. APCC further argues that the Commission must not rely on the waiver process to accomplish per-call compensation objectives that are more appropriately the subject of a rulemaking.[8] Ameritech also supports Sprint's request for a waiver for the same reasons that the Commission granted AT&T such a waiver.[9]

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[1] Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Second Report and Order, 7 FCC Rcd 3251, 3252-53 (1992) (*"Second Report and Order"*). The *Second Report and Order* defines an "access code" as "sequence of numbers that, when dialed, connects the caller to the [operator service provider ("OSP")] associated with that sequence, as opposed to the OSP presubscribed to the originating line. Access codes include 10XXX in equal access areas and "950" Feature Group B dialing (950-0XXX or 950-1XXX) anywhere, where the three-digit XXX denotes a particular IXC. Some OSPs use an 800 number as an access code." *Id.* at 3251 n.1.

[2] *See* Appendix A for a list of those parties filing comments or replies.

[3] *Second Report and Order*, 7 FCC Rcd at 3252-53.

[4] *Id.* at 3253. The Commission also noted that "[i]f and when sufficient progress is made in this area, we will initiate a new proceeding to make appropriate changes in the compensation mechanism that we adopt herein." *Id.* In the *Reconsideration Order*, adopted in September 1993, the Commission reaffirmed its commitment to establishing a per-call compensation mechanism once it becomes technically feasible: "We continue to believe that a per-call compensation mechanism is preferable to a flat fee per-phone." Memorandum Opinion and Order on Reconsideration, 8 FCC Rcd 7151, 7157 (*"Reconsideration Order"*).

[5] *Second Report and Order*, 7 FCC Rcd at 3259.

[6] Sprint Petition at 1.

[7] Allnet Comments at 1.

[8] APCC Comments at 1.

[9] Ameritech Reply at 1.

IV. DISCUSSION

6. The Commission has consistently expressed its preference for compensating PPOs on a per-call basis for originating interstate access code calls.[10] Since adoption of the payphone compensation mechanism, the Common Carrier Bureau has "monitor[ed] progress in this area and work[ed] with the industry to explore ways of moving to a per-call mechanism."[11] As we found earlier with AT&T's petition for waiver, we find here that the developments underlying Sprint's petition for waiver represent measurable progress toward this end. Waiver of Commission rules is appropriate only if special circumstances warrant a deviation from the general rule[12] and such deviation serves the public interest.[13] We find that Sprint has shown that special circumstances exist in this case, since it is only the second IXC to date that is able to compensate PPOs on a per-call basis for interstate access code calls placed to it. We also find that Sprint's request for a waiver serves the public interest by encouraging PPOs to place their payphones in locations that are likely to generate the most calls. Accordingly, we grant Sprint a temporary waiver to permit it to begin paying compensation to PPOs on a per-call basis on July 1, 1995. The obligations of the other IXCs required to pay compensation to PPOs are not affected by our grant of this waiver.

7. Allnet requests that all IXCs that are able to pay compensation on a per-call basis be permitted to do so without the need for filing a waiver.[14] Grant of a generic waiver, or evisceration of the waiver process, for all IXCs that possess this technical capability is beyond the scope of this proceeding. A petition for rulemaking to move the industry to a per-call compensation mechanism has been filed, however, and action on that petition is pending.[15]

8. As a condition to our granting Sprint a temporary waiver, we direct Sprint to file a report with the Chief, Common Carrier Bureau, at the end of each quarter specifying the total amount paid to PPOs under the per-call compensation mechanism, the number of compensable calls received by Sprint, and the number of PPOs receiving per-call compensation. We also direct Sprint to report the nature and ultimate resolution of any compensation disputes between it and any PPOs.

V. CONCLUSION

9. We conclude that Sprint has demonstrated good cause for grant of a waiver of Section 64.1301 of the Commission's rules. Accordingly, we authorize Sprint to pay, as of July 1, 1995, compensation to PPOs at the rate of $.25 per interstate access code call, pending further action by the Commission in this proceeding regarding the appropriate permanent compensation mechanism. We further conclude that the obligations of the other IXCs required to pay flat-rate compensation will not be affected by grant of this waiver.

VI. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 155(c), and Sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, that the Petition of Sprint for waiver of Section 64.1301 of the Commission's rules, 47 C.F.R. § 64.1301, IS GRANTED to the extent stated herein.

11. IT IS FURTHER ORDERED that this waiver shall become effective on July 1, 1995.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen M.H. Wallman
Chief, Common Carrier Bureau

APPENDIX A

Parties Filing Comments in This Proceeding

Petition for Waiver
Sprint Communications Co. ("Sprint")

Comments
American Public Communications Council ("APCC")
Allnet Communication Services, Inc. ("Allnet")

Replies
Ameritech Operating Companies ("Ameritech")
Sprint

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[10] See para. 2 and note 4 *supra*.
[11] *Reconsideration Order*, 8 FCC Rcd at 7157.
[12] *Northeast Cellular Telephone Company v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).
[13] *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).
[14] Allnet Comments at 1.
[15] *See* Petition of the American Public Communications Council and State Payphone Associations to Initiate, on an Expedited Basis, A Rulemaking Proceeding to Amend Section 64.1301 of the Commission's Regulations to Establish Per-Call Compensation for Access Code Calls, CC Docket No. 91-35, filed July 19, 1994.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

NYNEX Telephone Operating Companies — AAD 93-149

ORDER TO SHOW CAUSE

Adopted: February 24, 1995; Released: March 3, 1995

By the Commission:

1. At the direction of this Commission, the National Exchange Carriers' Association, Inc. ("NECA") hired Ernst and Young to conduct an independent audit of carrier-reported adjustments to the Common Line ("CL") revenue pool for 1988 and the first quarter of 1989.[1] Our subsequent review of that Commission-mandated audit revealed apparent violations of our accounting rules and reporting requirements by the NYNEX Telephone Companies ("NYNEX") during the audit period. These apparent violations may have continued beyond the period covered by the audit. This Order to Show Cause sets forth those apparent violations and directs NYNEX to show cause why this Commission should not: (1) issue a Notice of Apparent Liability for Forfeiture ("NAL") for apparent violation of Section 220(d) of the Communications Act of 1934, as amended;[2] (2) require NYNEX to adjust its price cap indexes; and (3) require NYNEX to improve its internal processes to bring them into compliance with Commission rules and orders.

2. Enforcing our accounting rules and reporting requirements is essential for the Commission to carry out its statutory obligations to ensure that rates for telecommunications services remain just and reasonable. Our ability to carry out these obligations is impaired if we cannot rely upon the information that carriers are required to submit about the costs of their operations and their allocations of those costs, or if those allocations are made improperly. As the telecommunications marketplace continues to diversify, with carriers providing more and more nonregulated services, our enforcement of accounting safeguards will become even more important if we are to continue to protect ratepayers from being overcharged for interstate services.

I. BACKGROUND

3. Our rules requires the LECs, on a monthly basis, to report to NECA their revenue, expense and investment data. NECA then uses these data to compute each LEC's monthly pool shares.[3] Because LECs do not have complete data available when they first report to NECA, the LECs initially report estimated data. In the following months, the LECs are required to reconcile their estimates with actual results. To ensure the accuracy of the reconciliation process, and because even the best accounting systems sometimes fail to prevent errors, NECA procedures allow the LECs twenty-four months to reconcile and correct previously submitted data. Thus, in each monthly "settlement cycle," LECs report estimated data for the current month as well as adjusted data for the preceding twenty-four months.

4. In the December 1988 settlement cycle, certain LECs reported unusually large adjustments to the CL pool. Commission staff audited the larger of these adjustments and found that they appeared to have been encouraged by NECA Board members representing the BOCs and further found them apparently inconsistent with the Commission's rules. As a result, the Commission issued *Notices of Apparent Liability for Forfeiture and Orders to Show Cause* against the BOCs that filed these adjustments.[4] The Commission also issued a letter of reprimand to the NECA Board of Directors and required, *inter alia*, that NECA hire an independent auditor to perform a comprehensive audit of significant adjustments the BOCs reported to the CL pool for 1988 and 1989.[5]

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[1] NECA collects cost data, including revenue, expense and investment data, from all local exchange carriers ("LECs") on a monthly basis. These data are then used to develop LEC-specific revenue requirements which are designed to recover those LEC-incurred costs that are allocated to the interstate jurisdiction under our jurisdictional separations rules, 47 C.F.R. Part 36. The revenue requirement development process is called "pooling," because, initially, all LEC-submitted cost data are combined ("pooled") based on whether they are non-traffic sensitive (*e.g.*, CL) or traffic sensitive ("TS") in nature. Accordingly, NECA administers two revenue pools. Non-traffic sensitive, CL costs are pooled to develop CL revenue requirements, and TS costs are pooled to develop TS revenue requirements. The revenues required to recover CL costs are collected through (1) carrier common line charges billed to the interexchange carriers; (2) subscriber line charges billed to end users and other customers; and (3) surcharges assessed against special access customers. These charges are set forth in tariffs NECA prepares for pool members, primarily the smaller, independent LECs. Other LECs -- including the Bell Operating Companies ("BOCs") -- currently do not participate in the cost recovery pools and, instead, prepare their own access tariffs. As explained *infra*, however, the pools are calculated based on revenue data provided by all LECs, and revenue data reported to NECA by the large carriers will, therefore, affect the charges of pool members. Moreover, during the time period covered by the audit, our rules required all LECs to participate in the CL pool.

[2] 47 U.S.C. §220(d). The NYNEX Telephone Operating Companies are the New England Telephone and Telegraph Co. (NET) and New York Telephone Co. (NYT).

[3] 47 C.F.R. §69.605.

[4] *See, e.g.*, Southwestern Bell Telephone Co., *Notice of Apparent Liability for Forfeiture and Order to Show Cause*, 5 FCC Rcd 7179 (1990). The Commission subsequently entered into Consent Decrees with the carriers, thus resolving these initial actions without determinations of liability. *See, e.g.*, Southwestern Bell Telephone Co., *Consent Decree Order*, 7 FCC Rcd 7692 (1992).

[5] Letter from Donna R. Searcy, Secretary, FCC, to Lawrence C. Ware, Chairman of the Board of Directors, NECA, 5 FCC Rcd 7183 (1990). The letter identified "significant adjustments" as individual adjustments of $100,000 or more that the BOCs had reported to the CL pool for 1988 and 1989, other than the adjustments that had been addressed in the Commission audit. The independent audit covered the fifteen data months from January 1, 1988 through March 31, 1989, after which time participation in the CL pool became voluntary and all BOCs left that pool. The letter, however, also required that the in-

5. NECA hired the public accounting firm of Ernst & Young to conduct the independent audit. Ernst & Young issued its report which NECA submitted to the Commission.[6] That report included numerous audit findings against the BOCs, including the NYNEX carriers. The conduct noted by Ernst & Young has had a substantial impact on the CL pool as well as on the carriers' interstate telecommunications services customers. This is because NECA distributes access tariff revenue based on reported data. Moreover, since the reported adjustments to the CL pool involve misstatements or miscalculations of interstate costs and revenues historically used to develop the reporting carrier's access charges, and, after 1988, its price cap indexes, the reporting carrier's interstate access customers, as well as end users, are affected. Although the independent auditor's report addressed the effects of the BOCs' conduct only on the CL pool, Commission auditors are examining the effect on all interstate telecommunications services. Those of the independent auditor's findings that were directed against NYNEX and that warrant Commission action are the subject of this Order to Show Cause. These findings are summarized below. Attachment A provides the specific details of each finding, the Commission rules that were apparently violated, and the companies' responses to those findings. Attachment B presents, in tabular form, a summary of the apparent violations and their revenue impacts as revealed by the record to date.

II. THE FINDINGS

6. Section 220(a) of the Communications Act grants to the Commission specific authority to "prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject [to the Act]...."[7] In turn, Section 220(d) authorizes the Commission to impose forfeitures on carriers who do not keep such accounts, records, and memoranda in the manner prescribed by the Commission. The findings in Attachment A appear to reveal conduct by the NYNEX carriers that violates Section 220 for the period that is the subject of the audit, namely, the period beginning January 1, 1988, and ending March 31, 1989.[8]

7. The findings that we address here involve the misstatement or miscalculation of $37.8 million of interstate costs and revenues for the period from January 1988 through March 1989.[9] In the aggregate, these misstatements or miscalculations apparently benefited NYNEX to the detriment of the users of NYNEX's interstate services. The misstatements or miscalculations shifted costs between or among access elements, thus apparently distorting NYNEX's interstate revenue requirements for particular services. The seriousness of the misstatements is compounded here not only because of the net impact and the extent of understatements and overstatements, but also because of the scope and number of the errors or apparent violations and the fact that some apparently have continued to the date of this Order to Show Cause. The findings reveal the NYNEX carriers' apparent failure to maintain their accounts, records, and memoranda in the manner prescribed by the Commission. To the extent that this conduct has continued, it must seriously undermine the Commission's confidence that NYNEX's accounts accurately reflect Commission-mandated accounting practices and reveal the true and lawful costs of NYNEX's interstate services. Moreover, as explained more fully below, even where the conduct may have been discontinued, the apparent rule violations and misstatements may very well have led NYNEX to compute price cap indexes that likely would require correction.

8. In the following paragraphs we describe the accounting irregularities that have led us to issue this Order to Show Cause.

A. Apparent Cash Working Capital Violations

9. The independent auditor found five instances in which NYNEX's calculation of cash working capital allowances appeared to violate Commission requirements.[10] These allowances are supposed to reflect the average amount of investor-supplied capital needed to fund carriers' day-to-day operations.[11] The cash working capital allowance is added to the carrier's rate base, thereby increasing the earnings the carrier is allowed. NYNEX's development of cash working capital included faulty calculations based on improper lead-lag studies, and resulted in NYNEX reporting incorrect information to NECA as well as to the Commission's Automated Reporting Management Information System (ARMIS) database.[12]

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dependent audit "include adjustments reported after [the BOCs] left the pool on April 1, 1989" since carriers were allowed to submit adjustments for up to twenty-four months following a particular data month. *Id.* As a result, the independent audit examined reported CL pool adjustments through March 1991.

[6] The Ernst & Young audit report is hereafter referred to as the "*Adjustments Report.*" On February 11, 1993, the Commission concluded that this audit had complied with Commission directives and had been performed "with a high degree of skill and care," and that the independent auditor had "exercised sound professional judgment reflecting purposes of the [audit] and the information gathered during [its] course." *See* Letter from Donna R. Searcy, Secretary, FCC, to Robert A. McArton, Chairman of the Board of Directors, NECA, 8 FCC Rcd 1315 (1993).

[7] 47 U.S.C. §220(a).

[8] The apparent violations roughly fall into two categories for purposes of potential remedies. First, certain apparent violations found to fall outside the applicable limitations period for assessing forfeitures may, nevertheless, lead to corrective action by the Commission. For example, the Commission may require adjustments to carrier price cap indexes to eliminate distortions caused by unlawful conduct. Second, other apparent violations, if found to be continuing or to have continued into the period covered by the limitations period, could support Notices of Apparent Liability for Forfeiture under Section 1.80 of the Commission's Rules, 47 C.F.R. §1.80, as well as support other remedies, such as price cap adjustments.

[9] These figures are based on estimates NYNEX provided to the independent auditor. *See* Letter from Bruce Baldwin, President, National Exchange Carrier Association, Inc., to Mr. Gerald P. Vaughan, Deputy Chief, Operations, Common Carrier Bureau, at NYNEX Attachment (Oct. 12, 1992) (*October 12 Letter*). Although those estimates encompass most of the independent auditor's findings, NYNEX did not provide estimates of the impact of certain findings on interstate rates and revenue requirements.

[10] *Attachment A*, at 2.

[11] *See, e.g.*, American Telephone and Telegraph Company, Docket No. 19129, *Phase II Initial Decision*, 64 FCC 2d 131, 389-90, paras. 880-87 (1976); *Phase II Final Decision*, 64 FCC 2d 1, 76, para. 194 (1977) (*19129 Phase II Final Decision*).

[12] *See Attachment A*, at 1-2. Lead-lag studies measure cash inflows and outflows in relation to the time service is rendered.

B. Allowance for Funds Used During Construction

10. NYNEX also apparently violated Commission rules when it calculated its allowance for funds used during construction ("AFUDC").[13] AFUDC is a regulatory tool used to compensate investors for funds used in construction projects. In the Docket 19129 proceeding, the Commission required AT&T and the Bell System to use the prime rate to compute AFUDC for ratemaking purposes.[14] According to the independent auditor, NYNEX used a rate other than prime to calculate its rate base, despite the ruling in Docket 19129.[15]

C. Apparent Jurisdictional Separations Violations

11. Responsibility for regulating telephone services is shared between this Commission, which regulates interstate service, and state commissions, which regulate intrastate service. Carriers must use a process called jurisdictional separations to apportion their costs and revenues between the state and interstate jurisdictions. The separations procedures are set forth in Part 36 of our rules.[16] The independent auditor found that in separating its regulated costs NYNEX used an unsupported allocator and incorrectly used direct assignment, in apparent violation of Commission rules.[17]

D. Lack of Documentation and Other Apparent Errors

12. The independent auditor also found a number of other apparent rule violations arising from NYNEX's failure to ensure that its employees and software operate properly.[18] While we recognize that even the best accounting system will experience errors, an accumulation of errors strongly suggests a faulty system. As such, errors and other violations accumulate, the data carriers report to NECA under Section 69.605 of our rules[19] and to us under Parts 43 and 65 of our rules[20] become increasingly unreliable. Although these errors may have no current impact on NYNEX's interstate rates, their number and scope persuade us to order NYNEX to show cause why its internal accounting and accounting-related practices should not generally be brought into compliance with Commission rules and orders.

III. DISCUSSION AND CONCLUSION

A. NALs

13. We find that the NYNEX carriers' conduct appears to be inconsistent with their statutory obligation to maintain their accounts, records, and memoranda as prescribed by the Commission. Carriers must accumulate, process, and report their financial and operating data in accordance with very specific Commission requirements because we rely on those data to help us ensure that interstate telephone rates are just and reasonable. Moreover, we cannot evaluate how well our accounting rules work if carriers disregard or misinterpret these rules. Therefore, where, as appears to be the case with NYNEX, carriers either violate our rules or fail to maintain the internal systems necessary to ensure compliance with those rules, we believe forfeitures may be appropriate under Section 220(d) of the Act.[21]

14. Section 220(d) of the Act authorizes us to impose forfeitures of up to $6000 per carrier per day for accounting-related violations.[22] Obviously, any violations that continued throughout the audit period and to the present could trigger substantial sums for the two NYNEX companies based on appropriate application of the statute of limitations. In order to make a determination about the amount of any forfeitures that may lie, we direct NYNEX to state when the conduct described in paragraphs 8 through 11 and detailed in Attachment A ceased, if ever, and otherwise show cause why notices of apparent liability pursuant to Section 1.80 of the Commission's rules should not issue.[23] NYNEX's response should include a discussion of the appropriate application of the prescribed limitations period.[24] NYNEX's response should also identify any mitigating circumstances we should consider in determining forfeiture amounts.[25]

B. Adjustment to Price Cap Indexes

15. As indicated above, NYNEX did not provide estimates of the impact on interstate service rates and revenue requirements of the conduct described in certain of the independent auditor's findings.[26] So that we may assess the full impact of NYNEX's conduct, we order the NYNEX carriers to estimate the interstate impact of each of these findings, and to file those estimates with the Commission. This filing shall include estimates of the annual

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Revenue and expense items that are received or paid before a service is rendered are considered "lead" items, and revenue and expense items that are received or paid after service is rendered are considered "lag" items. Lead-lag studies determine the number of days between receipt of revenues and payment of expenses.

[13] AFUDC is synonymous with interest during construction.

[14] The prime rate is usually defined as the lowest rate of interest charged by a lender to its best customers for short-term unsecured loans. The Commission's statement requiring the use of the prime rate is found in the *19129 Phase II Final Decision*, 64 FCC 2d at 59-60. We reaffirmed this prime rate-based calculation in our rate base proceeding. *See* Illinois Bell Telephone Co. v. FCC, 911 F.2d 776, 782-783 (D.C. Cir. 1990) (*Illinois Bell I*).

[15] *Attachment A*, at 5-6.

[16] 47 C.F.R. Part 36.

[17] *Attachment A*, at 7.

[18] *Id.* at 11.

[19] 47 C.F.R. §69.605.

[20] 47 C.F.R. Parts 43, 65.

[21] 47 U.S.C.§220(d). Section 220(d) provides for forfeitures if a carrier fails to keep its accounts, records and memoranda in the manner prescribed by the Commission.

[22] 47 U.S.C. §220(d). Prior to December 19, 1989, the forfeiture amount was fixed at $500 per violation per day.

[23] 47 C.F.R. §1.80.

[24] *See* 47 C.F.R. §1.80(c)(2). Although NYNEX's violations began January 1, 1988, we would assess forfeitures only for the period allowed for by the limitations period.

[25] *See* 47 U.S.C. §504(b).

[26] *See supra* note 9. These findings relate to unsupported retroactive adjustments and are discussed in paragraph 28 of Attachment A.

effect of each of the additional findings on NYNEX's CL, TS, special access, billing and collection, and interexchange costs and revenues for the period from January 1, 1988 to the public release date of this Order to Show Cause. We also order NYNEX to provide that information related to NYNEX's development of lag factors and lead-lag studies specifically requested in paragraphs 7, 9 and 14 of Attachment A, *infra*. We also direct NYNEX to provide estimates of the impact on the operating companies' interstate revenue requirements attributable to all conduct discussed in this Order and in Attachment A that continued beyond the period of the audit, and to file these estimates with its response. We specifically order NYNEX to provide a revised estimate of the impact of calculating AFUDC at rates other than the prime rate.

16. Since January 1, 1991, the Commission has regulated NYNEX's interstate access charges using the LEC price cap rules.[27] Under these rules, NYNEX's initial price cap indexes were established based upon its projected interstate access revenue requirements for the period July 1, 1990 to June 30, 1991. NYNEX's calculation of those revenue requirements may have reflected the practices detailed in Attachment A. Because, under price cap regulation, each succeeding price cap index for a basket of services is a function of an initial price cap index for that basket, NYNEX's price cap indexes for its interstate services (and, by definition, its interstate rates) would have continued to reflect the impact of any improper practices.[28] Absent Commission action, NYNEX's future indexes would reflect any overstatement as well. Therefore, we order NYNEX to show cause why we should not require it to reduce its current price cap indexes to remove any overstatement.[29]

C. Corrective Action

17. Finally, we tentatively conclude that we should direct the NYNEX carriers to improve their internal processes to bring them into compliance with Commission rules and orders, and we order those carriers to show cause why such action should not be required. We will take any additional actions we believe appropriate, including issuing a further Order to Show Cause, based on NYNEX's response.

IV. ORDERING CLAUSES

18. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j), 220(d), and 504(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i), 154(j), 220(d), & 504(b), and Section 1.701 of the Commission's rules, 47 C.F.R. §1.701, that the NYNEX Telephone Operating Companies SHALL SHOW CAUSE within sixty (60) days of the release date of this Order to Show Cause why the Commission should not issue Notices of Apparent Liability for Forfeiture against these companies for failure to keep their accounts, records, and memoranda on the books and in the manner prescribed by the Commission as set out in this Order to Show Cause, including Attachments A and B which are hereby incorporated by reference, and therewith SHALL FILE any and all data and other information required by this Order to Show Cause, including information requested in Attachment A.

19. IT IS FURTHER ORDERED, pursuant to Sections 4(i), 4(j), 201-203, 205, 215, 217-219, and 220 of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i), 154(j), 201-03, 205, 215, 217-19, & 220, and Section 1.701 of the Commission's rules, 47 C.F.R. §1.701, that the NYNEX Companies SHALL FILE within sixty (60) days of the release date of this Order to Show Cause interstate cost and revenue impact estimates, and such other information as specified in paragraph 14, *supra*.

20. IT IS FURTHER ORDERED, pursuant to Sections 4(i), 4(j), 201-203, 205, 215, 217-219, and 220 of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i), 154(j), 201-03, 205, 215, 217-19, & 220, and Section 1.701 of the Commission's rules, 47 C.F.R. §1.701, that the NYNEX Companies SHALL SHOW CAUSE within sixty (60) days of the release date of this Order to Show Cause why they should not be required to adjust their price cap indexes as specified in paragraph 15, *supra*.

21. IT IS FURTHER ORDERED, pursuant to Sections 4(i), 4(j), 201-203, 205, 215, 217-219, and 220 of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i), 154(j), 201-03, 205, 215, 217-19, and 220, and Section 1.701 of the Commission's rules, 47 C.F.R. §1.701, that the NYNEX Companies SHALL SHOW CAUSE within sixty (60) days of the release date of this Order to Show Cause why they should not be required to improve their internal processes to bring them into compliance with Commission rules and orders.

22. IT IS FURTHER ORDERED that the Secretary shall send by certified mail a copy of this Order to Show Cause to New England Telephone and Telegraph Co., 185 Franklin Street, Boston, Massachusetts 02107 and to New York Telephone Co., 1095 Avenue of the Americas, New York, New York 10036.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

ATTACHMENT A

1. We present below the apparent violations of the NYNEX carriers based on the findings in the Ernst & Young report that prompt us to issue the accompanying *Order to Show Cause*. For each apparent violation, we summarize the independent auditor's finding and any NYNEX reply. We also present our preliminary evaluation

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[27] *See Policies and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, 5 FCC Rcd 6786 (1990) (*LEC Price Cap Order*), *Erratum*, 5 FCC Rcd 7664 (Com. Car. Bur.1990), *modified on recon.*, 6 FCC Rcd 2637 (1991) (*LEC Reconsideration Order*), *aff'd, National Rural Telecom Ass'n v. FCC*, 988 F.2d 174 (D.C. Cir. 1993).

[28] *See* 47 C.F.R. §§61.44(b), 61.45(b)-(c).

[29] To achieve this, NYNEX would need to reduce its price cap indexes by the percentage change in its July 1, 1990 to June 30, 1991 projected interstate access revenue requirement that results from the removal of any overstatement. These reductions to the price cap indexes would need to be apportioned among the baskets based on the relative July 1, 1990 to June 30, 1991 projected interstate access revenue requirements in each basket.

of the record. In general, the violations are categorized according to the ratemaking component affected, including, *inta alia,* cash working capital, allowance for funds used during construction, and jurisdictional separations. In attachment B, we present the information in the record that describes the impact of these apparent violations on the NYNEX carriers' interstate revenue requirements for the fifteen-month audit period.

A. Cash Working Capital

2. We find five instances in which NYNEX's calculation of cash working capital allowances may have violated Commission requirements. Specifically, NYNEX's development of those allowances apparently violated Sections 65.800 and 65.820(d) and (e) of the Commission's rules, which instruct carriers on how to calculate the interstate rate base.[1] As a result of its cash working capital calculations, NYNEX reported incorrect information to NECA in apparent violation of Section 69.605 of the rules[2] and to the Commission in apparent violation of Section 65.600 of the rules.[3] Finally, to the extent this information has been reported in the Commission's automated database, Automated Reporting Management Information System (ARMIS), NYNEX also appears to have violated Section 43.21 of the rules, which requires that data filed in ARMIS be accurate, complete, and responsive, and certified as such by a senior carrier officer.[4]

3. The elements of lead-lag studies to calculate cash working capital were set forth in Docket No. 19129[5] and reaffirmed in Docket No. 86-497.[6] Lead-lag studies measure cash inflows and outflows in relation to the time service is rendered. Revenue and expense items that are received or paid before a service is rendered are considered "lead" items, and revenue and expense items that are received or paid after service is rendered are considered "lag" items.[7] Lead-lag studies determine the number of days between receipt of revenues and payment of expenses. The net number of revenue lag days is then multiplied by the average daily cash expenses to determine cash working capital.[8] A positive net lag results in a positive cash working capital allowance, which increases the rate base; a negative one results in a negative allowance, which reduces the rate base.[9] In previous orders, we have set forth the specific criteria for the inclusion and exclusion of various items in cash working capital calculations, but the general rule is that the net lead or lag is applied to the average daily *cash* expenses. The specifics of these five instances in which NYNEX failed to observe these criteria are discussed below.

4. *Apparent Violation No. 1:* Minimum bank balance are balances "maintained in an account to compensate banks, in lieu of fees, for services provided to that account."[10] In Docket 19129, the Administrative Law Judge (ALJ) made clear that minimum bank balances and working cash advances were to be included in the cash working capital allowance.[11] The independent auditor found that NYNEX instead used average daily cash balances to compute cash working capital.[12] This practice resulted in a $2,091,000 overstatement in NYNEX's interstate revenue requirements for January 1988 through March 1989, according to the independent auditor.[13]

5. Both NYNEX carriers took their average daily cash balances from Account 1130, Cash. NET asserts that it "uses Account 1130 as a proxy for minimum bank balances," a practice it contends is reasonable.[14] NYT states that its bank balances reflect efforts to minimize the amount of working capital kept in banks. NYT states further that it compensates banks for their services either by direct fees or by maintaining bank balances. NYT maintains that this practice is fairly common among corporate treasury departments. According to NYT, "[i]t is reasonable to conclude that the banks would receive approximately the same amount of fees under either all direct charges or all compensating balances and for any combinations in between." Thus, NYT concludes that a reduction for minimum bank balances would be offset by an increase in direct fees. In addition, NYT argues that the *86-497 Order* was silent on the treatment of minimum bank balances and

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[1] 47 C.F.R. §§65.800, 65.820. These rules require carriers, like the NYNEX carriers, to calculate the cash working capital component of their interstate rate base either by performing a lead-lag study of interstate revenue and expense items or by applying a specified formula. NYNEX elected to perform lead-lag studies.

[2] 47 C.F.R. §69.605.

[3] 47 C.F.R. §65.600. In these rate of return reports to the Commission, NYNEX is required to "provide full and specific answers to all questions propounded and information requested...." 47 C.F.R. §65.600(b), (d)(1).

[4] 47 C.F.R. §43.21(a).

[5] American Telephone & Telegraph Co., Docket No. 19129, *Phase II Final Decision*, 64 FCC 2d 1, 72-73, para. 187 (1977) (*19129 Phase II Final Decision*), *aff'g Phase II Initial Decision*, 64 FCC 2d 131 (1976) (*19129 Phase II Initial Decision*).

[6] Amendment of Part 65 of the Commission's Rules to Prescribe Components of the Rate Base and Net Income of Dominant Carriers, CC Docket No. 86-497, *Report and Order*, 3 FCC Rcd 269 (1987) (*86-497 Order*), *recon.* 4 FCC Rcd 1697 (1989) (*86-497 Reconsideration Order*), *remanded sub nom.* Illinois Bell Telephone Co. v. FCC, 911 F.2d 776 (D.C. Cir. 1990) (*Illinois Bell I*), *on remand*, 7 FCC Rcd 296 (1991) (*84-497 Decision on Remand*), *affirmed sub nom.* Illinois Bell Telephone Co. v. FCC, 988 F.2d 1254 (D.C. Cir. 1993) (*Illinois Bell II*).

[7] Related terms include "expense lag" (the average net lag of all of a carrier's cash expenses); "revenue lag" (the average net lag of a carrier's revenues); and "net lag" (the net of a carrier's expense lag and revenue lag).

[8] *86-497 Decision on Remand*, 7 FCC Rcd at 297, para. 9.

[9] Annual 1990 Access Tariff Filings, *Memorandum Opinion and Order*, 5 FCC Rcd 4177, 4219 (1990).

[10] *Docket 19129 Phase II Final Decision*, 64 FCC 2d at 76, para. 195 n.102.

[11] The ALJ emphasized that:

> working capital is intended to provide only for the current day-to-day needs of the business and not for any of the capital requirement. Second, working capital is the amount of dollars that are necessary to meet current needs, not the amount of dollars that a public utility would like to have on hand or might actually have on hand.

19129 Phase II Initial Decision, 64 FCC 2d at 403, para. 881.

[12] *Adjustments Report* at 49, 59-60.

[13] Letter from Bruce Baldwin, President, National Exchange Carrier Association, Inc., to Mr. Gerald P. Vaughan, Deputy Chief, Operations, Common Carrier Bureau, NYNEX Attachment at 1, 4 (October 12, 1992) (*October 12 Letter*).

[14] *Adjustments Report* at 50.

that the Commission's treatment of this area was not clarified until the release of the *86-497 Reconsideration Order* on February 22, 1989.[15]

6. It is true that the *86-497 Order* was silent on this issue. That Order did not discuss this matter because it had been resolved in Docket 19129 some ten years earlier. In Docket 19129, the Commission determined that minimum bank balances and working cash advances, rather than actual cash balances, were to be used in cash working capital calculations.[16] We include minimum bank balances in cash working capital calculations to protect carriers from loss if their money is encumbered because of a bank requirement. We do not allow carriers to earn a return on whatever additional money they may have in the bank.

7. *Apparent Violation No. 2:* The independent auditor found that, in its lead-lag study, NET used one revenue lag factor that was based only on customer revenue and applied it to all revenue categories. In addition, the independent auditor found that NET used one expense lag factor based on a sampling of expenses and did not separately analyze salaries and wages, benefits, rents, and other expenses. Subsequently, NET corrected these lag factors, but applied the updated factors only prospectively, according to the independent auditor.[17] The independent auditor stated that this lack of retroactivity resulted in a $888,000 overstatement in NET's interstate revenue requirements for January 1988 through March 1989.[18] NET maintains that it used the best lag study data available and argues that its practices are reasonable.[19]

8. The reasonableness of NET's lag factors are, we believe, dependent on whether they were based on representative samples of NET's revenues and expenses. We reserve judgment on this issue pending NYNEX's response to the accompanying *Order*. NYNEX's response should state in detail NET's reasons for apparently believing that customer revenue was representative of all NET revenue for purposes of determining a revenue lag factor. That response should also describe in detail the sampling criteria NET used in developing its expense lag factor.

9. *Apparent Violation No. 3:* The independent auditor found that NYT applied its customer revenue lag factor to other revenues in computing its overall revenue lag. Because other revenues are generated by carrier access services, the independent auditor stated that, for these revenues, NYT should have used its carrier lag factor instead. This factor would have increased the lag for other revenues from 28.26 to 50.57 days.[20] If, as the independent auditor stated, the "other revenues" category contains revenues related to carrier access services, then it would appear that NYT should have applied the carrier lag factor to this category in computing the overall revenue lag. We reserve judgment on this issue, however, pending NYT's full explanation of this matter in its response to the accompanying *Order*.

10. NYT stated, without explanation, that the 28.26 lag factor was correct for other revenues. NYT only acknowledged that it should have excluded billing and collection revenues from other revenues before calculating the cash working capital allowance.[21] The independent auditor stated that NYT's failure to exclude this revenue caused its interstate revenue requirements for January 1988 through March 1989 to be overstated by $927,000.[22]

11. *Apparent Violation No. 4:* The independent auditor found that NYT did not compute the federal income tax component of cash working capital using actual cash payments to the Internal Revenue Service (IRS). The independent auditor also found that NYT's federal income tax computations did not separate book to tax timing differences for items such as depreciation that are excluded from cash working capital as non-cash items.[23] Although NYT admits to these practices, it contends that it should not have been expected to exclude non-cash items from cash working capital prior to the release of the *86-497 Reconsideration Order* on February 22, 1989.[24] Including these non-cash items in the cash working capital calculation understated NYT's interstate revenue requirements for January 1988 through March 1989 by $770,000.[25]

12. We do not agree with NYT's position. The Commission has always excluded non-cash items from lead-lag studies.[26] If NYT wanted to change this policy, it should have filed a timely petition for waiver or a petition for rulemaking to include non-cash timing differences in cash working capital. Without such a change, however, NYT was bound to exclude these items, even before the Commission was asked to consider the issue in Docket No. 86-497.[27]

13. In addition, NYNEX admits that NYT was fully aware of the Commission's policy with regard to non-cash items well within NECA's twenty-four month adjustment period for January 1988 through January 1989. NYT should have reported a retroactive adjustment to NECA to bring itself into compliance with this policy.

14. *Apparent Violation No. 5:* The independent auditor found that NYT's lead-lag study for 1988 did not reflect changes between Part 31 and Part 32. The independent auditor stated that NYT had developed a 1988 study, but did not use it in 1988. Instead, it used a 1987 study, according to the independent auditor.[28] NYNEX argues that the 1987 study was an actual study, not an estimate and that it gave the independent auditor substantial support for that study. NYNEX also states that this study was the basic study available in 1988 and that it introduces basic studies

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[15] *Id.* at 61.

[16] *19129 Phase II Final Decision*, 64 FCC 2d at 76, para. 195; *19129 Phase II Initial Decision*, 64 FCC 2d at 409-10, paras. 905-08; *accord 86-497 Reconsideration Order*, 4 FCC Rcd at 1698-99, paras. 17, 22.

[17] *Adjustments Report* at 48-49.

[18] *October 12 Letter*, NYNEX Attachment at 1. The independent auditor does not provide separate revenue requirement impacts for the two factors.

[19] *Adjustments Report* at 50.

[20] *Id.* at 59.

[21] *Id.* at 61.

[22] *October 12 Letter*, NYNEX Attachment at 3.

[23] *Adjustments Report* at 65-66.

[24] *Id.*

[25] *October 12 Letter*, NYNEX Attachment at 4.

[26] *Illinois Bell I*, 911 F.2d at 783; *86-497 Reconsideration Order*, 4 FCC Rcd at 1700, para. 28; *86-497 Order*, 3 FCC Rcd at 279, para. 71; *19129 Phase II Initial Decision*, 64 FCC 2d at 403, paras. 880-87.

[27] *See 86-497 Reconsideration Order*, 4 FCC Rcd at 1699, paras. 24-25.

[28] *Adjustments report* at 59.

on a prospective basis only.[29] According to the independent auditor, NYT's use of the 1987 study understated its interstate revenue requirements for 1988 by $5,603,000.[30]

15. We reserve judgment on this issue pending our review of the information NYNEX gave the independent auditor regarding the 1987 study. We direct NYNEX to provide that information in its response to the accompanying *Order*.

B. Allowance for Funds Used During Construction

16. *Apparent Violation No. 6:* In the Docket 19129 proceeding, the Commission specified that, for ratemaking purposes, AT&T and the Bell System use the prime rate to compute the allowance for funds used during construction (AFUDC) of long-term projects.[31] The independent auditor found that NYNEX failed to calculate AFUDC based on that rate, but instead used an overall cost of capital rate.[32] The use of rates other than prime resulted in a $953,000 overstatement in NYNEX's interstate revenue requirements for January 1988 through March 1989, according to the independent auditor.

17. NYNEX does not agree with this finding. According to NYNEX, Section 32.2000(c)(2)(x) of the Commission's rules[33] clearly states that AFUDC includes the cost of debt and equity funds used in the construction of telecommunication property. NYNEX states that its Form M filings have annually notified the Commission of its AFUDC rate.[34] NYNEX maintains that there is an inconsistency between the Part 65 ratemaking requirements and the Part 32 accounting requirements of the Commission.[35] NYNEX is undoubtedly referring to the fact that the BOCs are required to use the prime rate for ratemaking purposes, but can use other rates for accounting purposes.[36]

18. We find that NYNEX's approach to calculating AFUDC was unauthorized. In Docket 19129, the Commission required the Bell System to use the prime rate in calculating AFUDC for ratemaking purposes.[37] That requirement applies until changed. NYNEX's decision that the requirement should no longer apply to NYNEX should have led to a timely petition for waiver or a petition for rulemaking to produce a ratemaking policy that more accurately reflects how NYNEX funds its construction program. Absent a change in Commission policy, NYNEX was obligated to use the applicable prime rate in its AFUDC calculations for ratemaking purposes. Instead, the NYNEX carriers used another rate, and thus apparently violated a Commission requirement. We note that NYNEX failed to correct its AFUDC practices, even though it was advised of our requirements long before the end of the two-year NECA adjustment period.[38]

19. The independent auditor's interstate revenue requirement estimate of $953,000 was based on information provided by NYNEX. We question whether this estimate of the revenue requirement impact is correct. The prime rate rarely ever exceeds rates based on sources of funds that include both debt and equity, and calculating AFUDC at rates higher than the prime rate would overstate the carriers' ratebases, depreciation expenses, and consequently interstate revenue requirements. A $953,000 revenue requirement overstatement appears too low to capture the impact of NYNEX's use of AFUDC rates higher than prime prior to the audit period. Therefore, NYNEX is instructed to calculate the impact of its practices on its interstate revenue requirement for the period from January 1988 to the present.

C. Jurisdictional Separations

20. *Apparent Violation No. 7:* The independent auditor found that NYNEX changed its separations process by discontinuing its practice of offsetting rent revenues against associated expenses. Instead NYNEX assigned the rent revenues to the intrastate jurisdiction, but separated the associated expenses between the intrastate and interstate jurisdictions, according to the independent auditor.[39] As a result, NYNEX's total interstate revenue requirement for January 1988 through March 1989 was overstated by $15,935,000.

21. NYNEX does not believe this should be considered a finding, because the 1988 NECA Cost Procedures do not directly address rent revenues. It also contends that there were annual audits of NYT's data submissions to NECA and this issue was not cited.[40] It further states that the need for additional adjustment to the pool is unclear.[41]

22. We do not agree. The effect of offsetting the revenues against expenses before entering them into the separations process was to apportion revenues on the same basis as

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[29] *Id.* at 61.

[30] *October 12 Letter*, NYNEX Attachment at 3.

[31] *19129 Phase II Final Decision*, 64 FCC 2nd at 59-60. AFUDC is synonymous with interest during construction.

[32] *Adjustments Report* at 50, 70.

[33] 47 C.F.R. §32.2000(c)(2)(x).

[34] Communications common carriers having operating revenues in excess of $100 million must file an Annual Report Form M with the Commission not later than March 31 of each year, covering the preceding calendar year. See 47 C.F.R. §§1.785, 43.21. The report contains corporate, financial and statistical data on the filing carrier. Carriers currently filing the Form M include the larger LECs, AT&T Communications, Alascom Inc., and Communications Satellite Corporation. For the LECs, the Form M schedules have been automated and incorporated into ARMIS. Revision of ARMIS USOA Report (FCC Report 43-02) for Tier 1 Telephone Companies and Annual From M, *Memorandum Opinion and Order*, 7 FCC Rcd 2535 (1993).

[35] Adjustments Report at 51, 70.

[36] The difference between the ratemaking and accounting treatment for AFUDC arose because the Commission required the use of the prime rate by AT&T and the BOCs for ratemaking, but did not extend this requirement to other carriers. Because all carrier were not required to use the prime rate, no rate at all was prescribed in the accounting rules. Amendment of Part 31, Uniform System of Accounts for Class A and Class B Telephone Companies, *Report and Order*, 68 FCC 2nd 902, 905-06 (1978).

[37] *See, e.g.*, Accounting and Ratemaking Treatment for the Allowance of Funds Used During Construction *Notice of Proposed Rulemaking*, Docket No. 93-50, 8 FCC Rcd 2084, 2084, para. 3 (1993) ("[t]he approaches specified in Docket 19129 are still in effect today"); *see also Illinois Bell I*, 911 F.2d at 780-81; *86-497 Reconsideration Order*, 4 FCC Rcd at 1703, paras. 56-57.

[38] *See 86-497 Reconsideration Order*, 4 FCC Rcd at 1703.

[39] *Adjustments Report* at 48, 64-65.

[40] *Id.* at 64-65.

[41] *Id.* at 48.

expenses. NYNEX apparently discontinued this practice and assigned all rent revenues to the intrastate jurisdiction while allocating all rent expenses between the interstate and intrastate jurisdictions. NYNEX offered no justification for changing its jurisdictional separation of rent revenues to create a mismatch between rent revenues and the associated expenses. Therefore, we find an apparent violation of Section 36.215(c) of the Commission's rules, which requires that rent revenues be apportioned on the basis of analysis.[42]

23. *Apparent Violation No. 8:* NYT maintains a trunk integrated record keeping system (TIRKS) to track its cable and wire facilities. The independent auditor stated that NYT changed this system to include exchange trunks and that this change produced erroneous results that could no longer reasonably be used as input into ISAACS[43] for separation purposes. The independent auditor also stated that, to overcome this problem, the company applied an average monthly growth factor to TIRKS data from a prior period. This procedure was apparently intended to reflect changes in NYT's operations that occurred after that prior period. This remedy proved fallible, because the growth factor, according to the independent auditor, did not recognize a new regional calling plan that had become effective in 1987 and was not reflected in the data from the prior period. This plan caused a significant shift in trunk counts from interexchange to exchange, increasing the exchange trunk count by 150%, according to the independent auditor.[44] The independent auditor states that excluding the impact of the regional calling plan from the growth factor overstated NYT's CL revenue requirements by $1,488,000, understated its TS revenue requirements by $5,163,000, overstated its special access revenue requirements by $3,477,000, and overstated its interexchange revenue requirements by $39,000 for January 1988 through March 1989. The net impact on NYT's interstate revenue requirements was a $159,000 understatement.[45]

24. NYT admits to this finding.[46] We find an apparent violation of Section 36.152 of our rules,[47] which requires cable and wire facilities to be properly divided between exchange and interexchange categories.

25. *Apparent Violation No. 9:* NYT performed a basic study that revised its conversation minutes and conversation minute miles based on 1987 data. The independent auditor found that this study contained mathematical errors that NYT entered into ISAACS.[48] The independent auditor stated that NYT eventually discovered the errors after it withdrew from the CL pool in April 1989, but did not make a retroactive adjustment to correct them. The independent auditor also stated that these errors overstated NYT's interstate revenue requirements for January 1988 through March 1989 by $5,297,000.[49] We find that NYT apparently violated Sections 36.126(e) and 36.156(b) of our rules,[50] which specify the proper allocation between jurisdictions of interexchange circuit equipment and cable and wire facilities.

D. Lack of Documentation

26. *Apparent Violation No. 10:* In order to maintain a reliable accounting system, a carrier's records must support its accounting entries. Section 220(c) of the Communications Act recognizes this by authorizing the Commission to have access to and the right of inspection and examination of "all accounts, records, and memoranda, including all documents, papers, and correspondence . . . kept or required to be kept" by the NYNEX carriers.[51] Section 220(c) also places "[t]he burden of proof to justify every accounting entry questioned by the Commission . . . on the person making, authorizing, or requiring such entry . . ."[52] In addition, Section 32.12(b) of our rules requires the NYNEX carriers to keep their accounting records "with sufficient particularity to show fully the facts pertaining to all accounting entries" and to file "[t]he detail records in such manner as to be readily accessible for examination" by Commission representatives.[53]

27. The independent auditor found numerous instances where revenue, cost, basic study or tax adjustments were unsupported by adequate documentation. NYNEX admits to these instances.

> NYT reported revenue adjustments of $1,400,000 to NECA reflecting corrections to AT&T minutes of use, but failed to provide adequate support for the adjustments. The independent auditor stated that parts of the basic studies supporting the adjustments were missing.[54]
>
> NYT reported adjustments to NECA for March 1988 to reflect changes to the ISAACS allocator and CL pooling process for that month. NYT could not support differences between the output from its cost allocation manual and the input amounts entered into ISAACS for four factors and two balances.[55]
>
> NYT reported adjustments for terminating underbillings that are not supported by its workpapers.[56] NYT reported $610,287 more in revenues to NECA than its workpapers would support.[57]
>
> NYT was unable to support a data entry that changed one of its basic separations studies. The independent auditor stated that CL revenue requirements of approximately $100,000 for the 11 months of 1988 were unsupported.[58]

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42 47 C.F.R. §36.215(c).

43 ISAACS is a separations and access charge software system designed to calculate revenue requirements using the procedures in Parts 36 and 69 of the Commission's Rules, 47 C.F.R. Parts 36, 69.

44 *Adjustments Report* at 57-59.

45 *October 12 Letter*, NYNEX Attachment at 3.

46 *Supplement to the Adjustments Report*, NYT Findings - Additional Information, para. 1 (Dec. 26, 1991).

47 47 C.F.R. §36.152.

48 *Adjustments Report* at 57.

49 *October 12 Letter*, NYNEX Attachment at 3.

50 47 C.F.R. §§36.126(e), 36.156(b).

51 47 U.S.C. §220(c).

52 *Id.*

53 47 C.F.R. §32.12(b).

54 *Adjustments Report* at 66.

55 *Id.* at 67.

56 *Id.* at 66.

57 *October 12 Letter*, NYNEX Attachment at 5.

58 *Adjustments Report* at 68-69.

> As part of its jurisdictional separations procedures, NYT periodically updates the data input programs that it uses to develop balances for use in ISAACS. One of these programs is for expenses, taxes, and investments. While implementing a new version of this program, NYT inadvertently erased the original version of the program which it had used during the November 1988 settlement cycle. Because of this error, the independent auditor could draw no conclusions as to the number or the accuracy of the adjustments NYT reported for that cycle.[59]
>
> NYT inadvertently erased the expense, tax, and investment data input program it used for the December 1988 settlement cycle. Because of this, the independent auditor could not determine whether NYT provided the auditor with all of the adjustments NYT reported to NECA for that cycle.[60]

28. These errors suggest that NYNEX's internal controls apparently failed to function properly in these instances. Therefore, we tentatively find that NYNEX's admitted documentation failures would support a conclusion that NYNEX fails to keep its accounts, records, and memoranda as prescribed by the Commission.

E. Other Errors

29. The independent auditor identified other clerical and computer errors that caused NYNEX to violate particular Commission rules. In this regard, NYNEX admits to the following errors.

30. *Apparent Violation No. 11:* The independent auditor found that NET erroneously omitted a subledger account balance used to develop an allocation factor for Account 6610, Marketing, for the July through November 1988 data months.[61] The independent auditor stated that this error understated NET's interstate revenue requirements by $1,300,000.[62]

31. *Apparent Violation No. 12:* The independent auditor found errors in the NET's balances in Account 4100, Net current deferred operating income taxes, and in Account 4340, Net noncurrent operating income taxes, for all the data months under review.[63] Collectively, these errors overstated NET's interstate revenue requirements by $267,000.[64]

32. *Apparent Violation No. 13:* In 1989, NYT revised its cost allocation manual and related model. The independent auditor found that, when processing new cost manual data for 1988, NYT failed to revise the data for April 1988.[65] According to the independent auditor this error overstated NYT's interstate revenue requirements for that month by $2,215,000.[66]

33. *Apparent Violation No. 14:* The independent auditor found that NYT overstated non-management, nonmedical expenses in its ISAACS process.[67] The independent auditor stated that this error overstated NYT's CL total revenue requirement for January 1988 through March 1989 by $174,000.[68]

34. *Apparent Violation No. 15:* The independent auditor found that NET overstated its CL revenues for January through November 1988.[69] NET stated that an erroneous spreadsheet caused this overstatement. The independent auditor stated that this error understated NET's CL and total interstate revenue requirements for those months by $105,000.[70]

35. *Apparent Violation No. 16:* The independent auditor found that NYT excluded the FCC taxable income adjustment[71] from the amount it reported to the CL pool for federal income adjustments.[72] This error understated NYT's CL revenue requirement by $745,000, according to the independent auditor.[73]

36. *Apparent Violation No. 17:* The state of Vermont instituted a state income tax that took effect July 1, 1988. NET initially thought that the tax was retroactive to January 1, 1988 and made a entry to accrue the tax liability for the seven-month period from January to July 1988. NET later reversed this entry, when it learned the tax was not retroactive. The independent auditor found that the reversal included taxes for July 1988, even though the tax had become effective July 1, 1988.[74] Thus, the independent auditor concluded that the tax expense NET reported to the CL pool for July 1988 was understated by $125,000 and that NET's total interstate revenue requirements for that month were understated by $312,000.[75]

37. These errors suggest that NYNEX's internal controls apparently failed to function properly in multiple instances. As a result of such errors, it may be necessary to require adjustments to NYNEX's price cap indexes and take other remedial action depending upon ourreview of the additional information we have directed NYNEX to submit.

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[59] *Id.* at 67-68.
[60] *Id.* at 69.
[61] *Adjustments Report* at 53.
[62] *October 12 Letter*, NYNEX Attachment at 2.
[63] *Adjustments Report* at 53-54.
[64] *October 12 Letter*, NYNEX Attachment at 2.
[65] *Adjustments Report* at 63-64.
[66] *October 12 Letter*, NYNEX Attachment at 4.
[67] *Adjustments Report* at 69-70.
[68] *October 12 Letter*, NYNEX Attachment at 5.
[69] *Adjustments Report* at 55.
[70] *October 12 Letter*, NYNEX Attachment at 2.
[71] The FCC taxable income adjustment is the net of: (1) taxable income items included in accounts not normally used for ratemaking that the Commission has expressly allowed for ratemaking purposes; and (2) taxable income items included in accounts normally used for ratemaking that the Commission has expressly excluded for ratemaking purposes. This adjustment is one component of the adjusted taxable income which is multiplied by the applicable federal tax rate to compute the federal income tax amount allowed for rate making purposes. *See* Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 69 of the FCC's Rules), *Report and Order*, 2 FCC Rcd 5770, 5782 (1987).
[72] *Adjustments Report* at 64.
[73] *October 12 Letter*, NYNEX Attachment at 4.
[74] *Adjustments Report* at 55-56.
[75] *October 12 Letter*, NYNEX Attachment at 2.

Attachment B

NYNEX - Summary of Apparent Violations

INTERSTATE REVENUE REQUIREMENT OVERSTATEMENT FOR THE AUDIT PERIOD (See Note) ($000)

	COMMISSION FINDING	CARRIER	TOTAL	COMMON LINE	OTHER INTERSTATE ACCESS ELEMENTS
1.	Used average balances instead of minimum bank balances to compute CWC.	New York	1,547	608	939
1.	Used average balances instead of minimum bank balances to compute CWC.	New England	544	210	334
2.	Inadequate revenue and expense analysis in lead/lag studies.	New England	888	341	547
3.	Used an inappropriate revenue lag factor for "Other" revenue.	New York	927	367	560
4.	Inadequate income tax analysis in CWC study.	New York	(770)	(231)	(539)
5.	Lag-study did not reflect new accounting system (Part 32).	New York	(5,603)	(2,201)	(3,402)
6.	Did not use prime rate in calculating AFUDC.	New York	929	335	594
6.	Did not use prime rate in calculating AFUDC.	New England	24	11	13
7.	Directly assigned rent revenue to state, but allocated related expense to interstate.	New York	12,439	4,444	7,995
7.	Directly assigned rent revenue to state, but allocated related expense to interstate.	New England	3,496	1,249	2,247

Attachment B

NYNEX - Summary of Apparent Violations

INTERSTATE REVENUE REQUIREMENT
OVERSTATEMENT FOR THE AUDIT PERIOD (See Note)
($000)

COMMISSION FINDING	CARRIER	TOTAL	COMMON LINE	OTHER INTERSTATE ACCESS ELEMENTS
8. Used obsolete studies to determine trunk counts.	New York	(159)	1,488	(1,647)
9. Used erroneous conversation-minutes and conversation-minute-mile data.	New York	5,297	(360)	5,657
10. Lack of documentation for numerous adjustments.	New York		Unknown	
11. Omission of Marketing expense.	New England	(1,300)	(446)	(854)
12. Errors in deferred operating income tax balances.	New England	267	101	166
13. Failed to revise April 1988 data to reflect new cost allocation manual.	New England	2,215	381	1,834
14. Overstated non-management non-medical expenses.	New York	174	174	0
15. Overstated CL revenue.	New England	(105)	(105)	0
16. Used erroneous income tax amount.	New York	(745)	(745)	0
17. Used erroneous Vermont state income tax amount for July 1988.	New England	(312)	(125)	(187)

Note: Overstated expenses are indicated by positive amounts.
Understated expenses are indicated by negative (parentheses) amounts.
Overstated revenues are indicated by negative (parentheses) amounts.
Understated revenues are indicated by positive amounts.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Pacific Bell AAD 93-150

ORDER TO SHOW CAUSE

Adopted: February 24, 1995; Released: March 3, 1995

By the Commission:

1. At the direction of this Commission, the National Exchange Carriers' Association, Inc. ("NECA") hired Ernst and Young to conduct an independent audit of carrier-reported adjustments to the Common Line ("CL") revenue pool for 1988 and the first quarter of 1989.[1] Our subsequent review of that Commission-mandated audit revealed apparent violations of our accounting rules and reporting requirements by Pacific Bell Telephone Company ("Pacific Bell") during the audit period. These apparent violations may have continued beyond the period covered by the audit. This Order to Show Cause sets forth those apparent violations and directs Pacific Bell to show cause why this Commission should not: (1) issue a Notice of Apparent Liability for Forfeiture ("NAL") for apparent violation of Section 220(d) of the Communications Act of 1934, as amended;[2] (2) require Pacific Bell to adjust its price cap indexes; and (3) require Pacific Bell to improve its internal processes to bring them into compliance with Commission rules and orders.

2. Enforcing our accounting rules and reporting requirements is essential for the Commission to carry out its statutory obligations to ensure that rates for telecommunications services remain just and reasonable. Our ability to carry out these obligations is impaired if we cannot rely upon the information that carriers are required to submit about the costs of their operations and their allocations of those costs, or if those allocations are made improperly. As the telecommunications marketplace continues to diversify, with carriers providing more and more nonregulated services, our enforcement of accounting safeguards will become even more important if we are to continue to protect ratepayers from being overcharged for interstate services.

I. BACKGROUND

3. Our rules require the LECs, on a monthly basis, to report to NECA their revenue, expense and investment data. NECA uses these data to compute each LEC's monthly pool shares.[3] Because LECs do not have complete data available when they first report to NECA, the LECs initially report estimated data. In the following months, the LECs are required to reconcile their estimates with actual results. To ensure the accuracy of the reconciliation process, and because even the best accounting systems sometimes fail to prevent errors, NECA procedures allow the LECs twenty-four months to reconcile and correct previously submitted data. Thus, in each monthly "settlement cycle," LECs report estimated data for the current month as well as adjusted data for the preceding twenty-four months.

4. In the December 1988 settlement cycle, certain LECs reported unusually large adjustments to the CL pool. Commission staff audited the larger of these adjustments and found that they appeared to have been encouraged by NECA Board members representing the BOCs and further found them apparently inconsistent with the Commission's rules. As a result, the Commission issued *Notices of Apparent Liability for Forfeiture and Orders to Show Cause* against the BOCs that filed these adjustments.[4] The Commission also issued a letter of reprimand to the NECA Board of Directors and required, *inter alia*, that NECA hire an independent auditor to perform a comprehensive audit of significant adjustments the BOCs reported to the CL pool for 1988 and 1989.[5]

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[1] NECA collects cost data, including revenue, expense and investment data, from all local exchange carriers ("LECs") on a monthly basis. These data are then used to develop LEC-specific revenue requirements which are designed to recover those LEC-incurred costs that are allocated to the interstate jurisdiction under our jurisdictional separations rules, 47 C.F.R. Part 36. The revenue requirement development process is called "pooling," because, initially, all LEC-submitted cost data are combined ("pooled") based on whether they are non-traffic sensitive (*e.g.*, CL) or traffic sensitive ("TS") in nature. Accordingly, NECA administers two revenue pools. Non-traffic sensitive, CL costs are pooled to develop CL revenue requirements, and TS costs are pooled to develop TS revenue requirements. The revenues required to recover CL costs are collected through (1) carrier common line charges billed to the interexchange carriers; (2) subscriber line charges billed to end users and other customers; and (3) surcharges assessed against special access customers. These charges are set forth in tariffs NECA prepares for pool members, primarily the smaller, independent LECs. Other LECs -- including the Bell Operating Companies ("BOCs") -- currently do not participate in the cost recovery pools and, instead, prepare their own access tariffs. As explained *infra*, however, the pools are calculated based on revenue data provided by all LECs, and revenue data reported to NECA by the large carriers will, therefore, affect the charges of pool members. Moreover, during the time period covered by the audit, our rules required all LECs to participate in the CL pool.

[2] 47 U.S.C. §220(d).

[3] 47 C.F.R. §69.605.

[4] *See, e.g.*, Pacific Bell, *Notice of Apparent Liability for Forfeiture and Order to Show Cause*, 5 FCC Rcd 7176 (1990). The Commission subsequently entered into Consent Decrees with the carriers thus resolving these initial actions without determinations of liability. *See, e.g.*, Pacific Bell, *Consent Decree Order*, 6 FCC Rcd 7467 (1991).

[5] Letter from Donna R. Searcy, Secretary, FCC, to Lawrence C. Ware, Chairman of the Board of Directors, NECA, 5 FCC Rcd 7183 (1990). The letter identified "significant adjustments" as individual adjustments of $100,000 or more, other than the adjustments that had been addressed in the Commission audit, that the BOCs had reported to the CL pool for 1988 and 1989. The independent audit covered the fifteen data months from January 1, 1988 through March 31, 1989, after which time participation in the CL pool became voluntary and all BOCs left that pool. The letter, however, also required that the independent audit "include adjustments reported after [the BOCs] left the pool on April 1, 1989" since carriers were allowed to

5. NECA hired the public accounting firm of Ernst & Young to conduct the independent audit. Ernst & Young issued its report which NECA submitted to the Commission.[6] That report included numerous audit findings against the BOCs, including Pacific Bell. The conduct noted by Ernst & Young has had a substantial impact on the CL pool as well as on the carrier's interstate telecommunications services customers. This is because NECA distributes access tariff revenue based on reported data. Moreover, since the reported adjustments to the CL pool involve misstatements or miscalculations of interstate costs and revenues historically used to develop the reporting carrier's access charges, and, after 1988, its price cap indexes, the reporting carrier's interstate access customers, as well as end users, are affected. Although the independent auditor's report addressed the effects of the BOCs' conduct only on the CL pool, Commission auditors are examining the effect on all interstate telecommunications services. Those of the independent auditor's findings that were directed against Pacific Bell and that appear to warrant Commission action are the subject of this Order to Show Cause. The findings are summarized below. Attachment A provides the specific details of each finding, the Commission rules that were apparently violated, and the company's responses to those findings. Attachment B presents, in tabular form, a summary of the apparent violations and their revenue impacts as revealed by the record to date.

II. THE FINDINGS

6. Section 220(a) of the Communications Act grants to the Commission specific authority to "prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject [to the Act]...."[7] In turn, Section 220(d) authorizes the Commission to impose forfeitures on carriers who do not keep such accounts, records, and memoranda in the manner prescribed by the Commission. The findings noted in Attachment A appear to reveal conduct by Pacific Bell that violates Section 220 for the period that is the subject of the audit, namely, the period beginning January 1, 1988, and ending March 31, 1989.[8]

7. The independent auditor's findings that we address here involve the misstatement or miscalculation of $3.4 million of interstate costs and revenues for the period from January 1988 through March 1989.[9] In the aggregate, these misstatements or miscalculations apparently benefited Pacific Bell to the detriment of the users of Pacific Bell's interstate services. FNN These misstatements or miscalculations also shifted costs between or among access elements, thus apparently overstating or understating Pacific Bell's interstate revenue requirements for particular services. The seriousness of the misstatements is compounded here not only because of the net impact and the extent of understatements and overstatements, but also because of the scope of the errors or apparent violations and the fact that some of them may have continued to the date of this Order to Show Cause. The findings reveal Pacific Bell's apparent failure to maintain its accounts, records, and memoranda in the manner prescribed by the Commission. To the extent that this conduct has continued, it must seriously undermine the Commission's confidence that Pacific Bell's accounts accurately reflect Commission-mandated accounting practices and reveal the true and lawful costs of Pacific Bell's interstate services. Moreover, and as explained more fully below, the apparent rule violations and misstatements may very well have led Pacific Bell to compute price cap indexes that likely would require correction.

8. In the following paragraphs we describe the accounting irregularities that have led us to issue this Order to Show Cause.

A. Apparent Cash Working Capital Violations

9. The independent auditor found that Pacific Bell's calculation of cash working capital allowances violated Commission requirements.[10] These allowances are supposed to reflect the average amount of investor-supplied capital needed to fund carriers' day-to-day operations.[11] Each cash working capital allowance is added to a carrier's rate base, thereby increasing the earnings the carrier is allowed. Pacific Bell calculated cash working capital allowances based on lead-lag studies.[12] In computing cash working capital allowances, carriers are allowed to add minimum bank balances to the results obtained from their lead-lag studies. The independent auditor found that Pacific Bell improperly added average daily ledger balances, rather than mini-

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submit adjustments for up to twenty-four months following a particular data month. *Id.* As a result, the independent auditor examined reported CL pool adjustments through March 1991.

[6] The Ernst & Young audit report is hereafter referred to as the "*Adjustments Report.*" On February 11, 1993, the Commission concluded that this audit had complied with Commission directives and had been performed "with a high degree of skill and care," and that the independent auditor had "exercised sound professional judgment reflecting purposes of the [audit] and the information gathered during [its] course." *See* Letter from Donna R. Searcy, Secretary, FCC, to Robert A. McArton, Chairman of the Board of Directors, NECA, 8 FCC Rcd 1315 (1993).

[7] 47 U.S.C. §220(a).

[8] The apparent violations roughly fall into two categories for purposes of potential remedies. First, certain apparent violations found to fall outside the applicable limitations period for assessing forfeitures may, nevertheless, necessitate corrective action by the Commission. For example, the Commission may require adjustments to carrier price cap indexes to eliminate distortions caused by unlawful conduct. Second, other violations, if found to be continuing or to have continued into the period covered by the limitations period, could support Notices of Apparent Liability for Forfeiture under Section 1.80 of the Commission's Rules, 47 C.F.R. §1.80, as well as support other remedies, such as price cap adjustments.

[9] These figures are based on estimates Pacific Bell provided to the independent auditor. *See* Letter from Bruce Baldwin, President, National Exchange Carrier Association, Inc., to Mr. Gerald P. Vaughan, Deputy Chief, Operations, Common Carrier Bureau, at Pacific Bell Attachment (Oct. 12, 1992) (*October 12 Letter*). Pacific Bell, however, did not provide estimates of the impact on interstate rates and revenue requirements for the finding related to the lack of documentation.

[10] *Attachment A*, at 1-4.

[11] *See Attachment A*, at 3 n.18.

[12] *See Attachment A*, at 1-2. Lead-lag studies measure cash inflows and outflows in relation to the time service is rendered. Revenue and expense items that are received or paid before a service is rendered are considered "lead" items, and revenue and expense items that are received or paid after service is rendered are considered "lag" items. Lead-lag studies determine the number of days between receipt of revenues and payment of expenses.

mum bank balances, to the results of its lead-lag studies.[13] The independent auditor also found that Pacific Bell improperly included non-cash amounts in Account 7250 in its computation of cash working capital.[14] From the record, it appears that these practices may have continued beyond the audit period.

B. Other Apparent Errors

10. The independent auditor also found other apparent rule violations that might be characterized as clerical or computer errors, including the failure of Pacific Bell to provide adequate documentation to support revenue adjustments for the months of February 1988 and March 1988.[15] In other cases, Pacific Bell failed to report uncollectibles, or failed to report the correct adjustment amount for uncollectibles to the NECA CL pool for certain months during the review period.[16]

11. Section 32.5081[17] states that the end user revenue account Account 5081 shall contain the federally tariffed monthly flat rate charge end users must pay. The independent auditor found that Pacific Bell improperly included revenues from customers for the predesignation of their primary interexchange carriers[18] in Account 5081.[19]

12. Section 32.4310[20] requires that unfunded pension accruals be recorded in Account 4310. The independent auditor found that, for the period March to May 1988, Pacific Bell recorded such accruals in the wrong account and that this misclassification affected the amounts allocated to the interstate jurisdiction and the CL pool, resulting in understatements of the CL, TS, and special access revenue requirements.[21]

13. As such errors and other violations accumulate, the data carriers report to NECA under Section 69.605 of our rules[22] and to us under Parts 43 and 65 of our rules[23] become increasingly unreliable. Although these errors may have no current impact on Pacific Bell's interstate rates, their number and scope persuade us to order Pacific Bell to show cause why its internal accounting and accounting-related processes should not generally be brought into compliance with Commission rules and orders.

III. DISCUSSION AND CONCLUSION

A. NALs

14. We find that Pacific Bell's conduct appears to be inconsistent with its statutory obligation to maintain its accounts, records, and memoranda as prescribed by the Commission. Carriers must accumulate, process, and report their financial and operating data in accordance with very specific Commission requirements because we rely on those data to help us ensure that interstate telephone rates are just and reasonable. Moreover, we cannot evaluate how well our accounting rules work if carriers disregard or misinterpret these rules. Therefore, where, as appears to be the case with Pacific Bell, a carrier either intentionally violates our rules or fails to maintain the internal systems necessary to ensure compliance with those rules, we believe a forfeiture may be appropriate under Section 220(d) of the Act.[24]

15. Section 220(d) of the Act authorizes us to impose forfeitures of up to $6000 per carrier per day for accounting-related violations.[25] Obviously, any violations that continued throughout the audit period and to the present could trigger a substantial forfeiture for Pacific Bell based on the appropriate application of the statute of limitations. In order to make a determination about the amount of any forfeitures that may lie, we direct Pacific Bell to state when the conduct described in paragraphs 7 through 10 and detailed in Attachment A ceased, if ever, and otherwise show cause why notices of apparent liability for forfeiture pursuant to section 1.80 of the Commission's rules should not issue.[26] Pacific Bell's response should discuss the appropriate application of the prescribed limitations period.[27] Pacific Bell's response also should identify any mitigating circumstances we should consider in determining forfeiture amounts.[28]

B. Adjustment to Price Cap Indexes.

16. As indicated above, Pacific Bell did not provide estimates of the impact on interstate rates and revenues of the conduct described in one of the independent auditor's findings.[29] So that we may assess the full impact of its conduct, we order Pacific Bell to estimate the interstate impact of this finding, and to file its estimates with the Commission. This filing shall include estimates of the annual effect of the finding on Pacific Bell's CL, TS, special access, billing and collection, and interexchange costs and revenues for the period from January 1, 1988 to the public release date of this Order to Show Cause. We also direct Pacific Bell to provide estimates of the impact on the operating companies' interstate revenue requirements attributable to all conduct discussed in this Order and in Attachment A that continued beyond the period of the audit, and to file these estimates with its response.

17. Since January 1, 1991, the Commission has regulated Pacific Bell's interstate access charges using the LEC price

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[13] *Attachment A*, at 2.
[14] *Id.* at 4.
[15] *Id.* at 4-5.
[16] *Id.* at 5.
[17] 47 C.F.R. §32.5081.
[18] Under our rules, an end user has the right to select one interexchange carrier as his or her primary carrier. *See Investigation of Access and Divestiture Related Tariffs*, 101 FCC 2d 911 (1985) (describing the presubscription process LECs must follow).
[19] *Attachment A*, at 6.
[20] 47 C.F.R. §32.4310.
[21] *Attachment A*, at 5-6.
[22] 47 C.F.R. §69.605.
[23] 47 C.F.R. Parts 43, 65.
[24] Section 220(d) provides for forfeitures if a carrier fails to keep its accounts, records and memoranda in the manner prescribed by the Commission. 47 U.S.C. §220(d).
[25] 47 U.S.C. §220(d). Prior to December 19, 1989, the forfeiture amount was fixed at $500 per violation per day.
[26] 47 C.F.R. §1.80.
[27] *See* 47 C.F.R. §1.80(c)(2). Although Pacific Bell's violation began January 1, 1988, we would assess a forfeiture only for the period allowed for by the limitations period.
[28] *See* 47 U.S.C. §504(b).
[29] *See supra* note 9. This finding is discussed in paragraphs 10-12 of Attachment A.

cap rules.[30] Under these rules, Pacific Bell's initial price cap indexes were established based upon its projected interstate access revenue requirements for the period July 1, 1990 to June 30, 1991. Pacific Bell's calculation of those revenue requirements may have reflected the practices detailed in Attachment A. Because, under price cap regulation, each succeeding price cap index for a basket of services is a function of an initial price cap index for that basket, Pacific Bell's price cap indexes for its interstate services (and, by definition, its interstate rates) would have continued to reflect the impact of any improper practices.[31] Absent Commission action, Pacific Bell's future indexes would reflect any overstatement as well. Therefore, we order Pacific Bell to show cause why we should not require it to reduce its current price cap indexes to remove any overstatement.[32]

C. Corrective Action.

18. Finally, we tentatively conclude that we should direct Pacific Bell to improve its internal processes to bring them into compliance with Commission rules and orders, and we order those carriers to show cause why such action should not be required. We will take any additional actions we believe appropriate, including issuing a further Order to Show Cause, based on Pacific Bell's response.

IV. ORDERING CLAUSES

19. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j), 220(d), and 504(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i), 154(j), 220(d), & 504(b), and Section 1.701 of the Commission's rules, 47 C.F.R. §1.701, that Pacific Bell shall SHOW CAUSE within sixty (60) days of the release date of this Order to Show Cause why the Commission should not issue a Notice of Apparent Liability for Forfeiture against Pacific Bell for failure to keep its accounts, records, and memoranda on the books and in the manner prescribed by the Commission as set out in this Order to Show Cause, including Attachments A and B which are hereby incorporated by reference, and therewith SHALL FILE any and all data and other information required by this Order to Show Cause, including information requested in Attachment A.

20. IT IS FURTHER ORDERED, pursuant to Sections 4(i), 4(j), 201-203, 205, 215, 217-219, and 220 of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i), 154(j), 201-03, 205, 215, 217-19, & 220, and Section 1.701 of the Commission's rules, 47 C.F.R. §1.701, that Pacific Bell SHALL FILE within sixty (60) days of the release date of this Notice of Apparent Liability for Forfeiture and Order to Show Cause interstate cost and revenue impact estimates as specified in paragraph 15, *supra*.

21. IT IS FURTHER ORDERED, pursuant to Sections 4(i), 4(j), 201-203, 205, 215, 217-219, and 220 of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i), 154(j), 201-03, 205, 215, 217-19, & 220, and Section 1.701 of the Commission's rules, 47 C.F.R. §1.701, that Pacific Bell SHALL SHOW CAUSE within sixty (60) days of the release date of this Order to Show Cause why it should not be required to adjust its price cap indexes as specified in paragraph 16, *supra*.

22. IT IS FURTHER ORDERED, pursuant to Sections 4(i), 4(j), 201-203, 205, 215, 217-219, and 220 of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i), 154(j), 201-03, 205, 215, 217-19, and 220, and Section 1.701 of the Commission's rules, 47 C.F.R. §1.701, that Pacific Bell SHALL SHOW CAUSE within sixty (60) days of the release date of this Order to Show Cause why it should not be required to improve its internal processes to bring them into compliance with Commission rules and orders.

23. IT IS FURTHER ORDERED that the Secretary shall send by certified mail a copy of this Order to Show Cause to Pacific Bell, 140 New Montgomery Street, San Francisco, California 94105.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Attachment A

1. We present below the apparent violations of Pacific Bell based on the findings in the Ernest & Young report that prompt us to issue the accompanying *Order to Show Cause*. For each apparent violation, we summarize the independent auditor's finding and any Pacific Bell reply. We also present our preliminary evaluation of the record. The violations are categorized according to cash working capital, lack of documentation, and other apparent errors. In attachment B, we present the information in the record that describes the impact of these apparent violations on Pacific Bell's interstate revenue requirement for the fifteen-month audit period.

A. Cash Working Capital

2. We find two instances in which Pacific Bell's calculation of cash working capital allowances may violate Commission requirements. These apparent violations occurred during the audit period from January 1988 to March 1989, and appear to have continued beyond the audit period. Specifically, Pacific Bell's development of those allowances apparently violated Sections 65.800 and 65.820(d) and (e) of the Commission's rules, which instruct carriers on how to calculate the interstate rate base.[1] As a

[30] *See Policies and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, 5 FCC Rcd 6786 (1990) (*LEC Price Cap Order*), *Erratum*, 5 FCC Rcd 7664 (Com. Car. Bur.1990), *modified on recon.*, 6 FCC Rcd 2637 (1991) (*LEC Reconsideration Order*), *aff'd, National Rural Telecom Ass'n v. FCC*, 988 F.2d 174 (D.C. Cir. 1993).

[31] *See* 47 C.F.R. §§ 61.44(b), 61.45(b)-(c).

[32] To achieve this, Pacific Bell would need to reduce its price cap indexes by the percentage change in its July 1, 1990 to June 30, 1991 projected interstate access revenue requirement that results from the removal of any overstatement. These reductions to the price cap indexes would need to be apportioned among the baskets based on the relative July 1, 1990 to June 30, 1991 projected interstate access revenue requirements in each basket.

[1] 47 C.F.R. §§65.800, 65.820(d)-(e). These rules require carriers, like the Pacific Bell carriers, to calculate the cash working capital component of their interstate rate base either by per-

result of its cash working capital calculations, Pacific Bell reported incorrect information to NECA in apparent violation of Section 69.605 of the rules[2] and to the Commission in apparent violation of Section 65.600 of the rules.[3] Finally, to the extent this information has been reported in the Commission's automated database, Automated Reporting Management Information System (ARMIS), Pacific Bell also appears to have violated Section 43.21 of the rules, which requires that data filed in ARMIS be accurate, complete, and responsive, and certified as such by a senior carrier officer.[4]

3. The elements of lead-lag studies to calculate cash working capital were set forth in Docket No. 19129[5] and reaffirmed in Docket No. 86-497. Lead-lag studies measure cash inflows and outflows in relation to the time service is rendered.[6] Revenue and expense items that are received or paidbefore a service is rendered are considered "lead" items, and revenue and expense items that are received or paid after service is rendered are considered "lag" items.[7] Lead-lag studies determine the number of days between receipt of revenues and payment of expenses. The net number of revenue lag days is then multiplied by the average daily cash expenses to determine cash working capital.[8] In previous orders, we have set forth the criteria for the inclusion and exclusion of various items in cash working capital calculations, but the general rule is that the net lead or lag is applied to the average daily *cash* expenses. The specifics of these two instances are discussed below.

4. *Apparent Violation No.1:* Minimum bank balances were defined in Docket No. 19129 as the minimum balances "maintained in an account to compensate banks, in lieu of fees, for services provided to that account."[9] In computing cash working capital allowances, carriers are allowed to add minimum bank balances to the results obtained from lead-lag studies. The independent auditor found that Pacific Bell substituted average daily bank balances for minimum bank balances in its cash working capital computations.[10] According to the independent auditor, this practice resulted in a $1,614,000 overstatement of Pacific Bell's interstate revenue requirements for January 1988 through March 1989.[11]

5. Contrary to the definition in Docket No. 19129, Pacific Bell defines minimum bank balance as the minimum cash amount required to meet operating needs.[12] Pacific Bell argues that the Commission's definition is consistent with Pacific's, and not the independent auditor's, definition. Pacific Bell states that its cash account is a non-interest bearing account. Pacific Bell explains that, on a daily basis, it transfers into that account the amount of cash it estimates will be needed for outlays.[13]

6. Pacific Bell notes that the Commission's rules do not define minimum cash balance. In addition, Pacific Bell cites the Administrative Law Judge's (ALJ's) definition of cash working capital in Docket No. 19129 as the additional cash that is "required in order to carry on the day-to-day business operations of the utility."[14] Pacific Bell also cites the ALJ's statements that "working capital is intended to provide only for the current day-to-day needs of the business and not for any of the capital requirement"[15] and that cash working capital should "enable the system to meet imminently due obligations without placing entire reliance on external sources of funds."[16] Pacific Bell contends that these statements support its interpretation of minimum bank balance.[17]

7. We agree that Part 65 does not define minimum bank balance. We do not agree, however, with Pacific Bell's interpretation of that term as meaning the average daily cash balance of Pacific Bell's account. In Docket No. 19129, the ALJ made clear that minimum bank balances, rather than actual cash balances, were to be included in cash working capital.[18] As stated above, minimum bank balances were defined in Docket No. 19129 as the minimum balances "maintained in an account to compensate

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forming a lead-lag study of interstate revenue and expense items or by applying a specified formula. Pacific Bell elected to perform lead-lag studies.

[2] 47 C.F.R. §69.605.

[3] 47 C.F.R. §65.600. In these rate of return reports to the Commission, Pacific Bell is required to "provide full and specific answers to all questions propounded and information requested...." 47 C.F.R. §65.600(b), (d)(1).

[4] 47 C.F.R. §43.21(a).

[5] American Telephone & Telegraph Co., Docket No. 19129, *Phase II Final Decision*, 64 FCC 2d 1, 72-73, para. 187 (1977) (*19129 Phase II Final Decision*), *aff'g Phase II Initial Decision*, 64 FCC 2d 131 (1976) (*19129 Phase II Initial Decision*).

[6] Amendment of Part 65 of the Commission's Rules to Prescribe Components of the Rate Base and Net Income of Dominant Carriers, CC Docket No. 86-497, *Report and Order*, 3 FCC Rcd 269 (1987) (*86-497 Order*), *recon.*, 4 FCC Rcd 1697 (1989) (*86-497 Reconsideration Order*), *remanded sub nom.* Illinois Bell Telephone Co. v. FCC, 911 F.2d 776 (D.C. Cir. 1990) (*Illinois Bell I*), *on remand*, 7 FCC Rcd 296 (1991) (*84-497 Decision on Remand*), *affirmed sub nom.* Illinois Bell Telephone Co. v. FCC, 988 F.2d 1254 (D.C. Cir. 1993) (*Illinois Bell II*).

[7] Related terms include "expense lag" (the average net lag of all of a carrier's cash expenses); "revenue lag" (the average net lag of a carrier's revenues); and "net lag" (the net of a carrier's expense lag and revenue lag).

[8] *86-497 Decision on Remand*, 7 FCC Rcd at 297, para. 9.

[9] *Docket 19129 Phase II Final Decision*, 64 FCC 2d at 76, para. 195 n.102.

[10] *Adjustments Report* at 71-72.

[11] Letter from Bruce Baldwin, President, National Exchange Carrier Association, Inc., to Mr. Gerald P. Vaughan, Deputy Chief, Operations, Common Carrier Bureau, Pacific Bell Attachment at 1 (October 12, 1992) (*October 12 Letter*).

[12] *Adjustments Report* at 72-73. Pacific Bell uses the term, "minimum cash balance" in lieu of minimum bank balance.

[13] *Id.*

[14] *Id.* at 73, *quoting 19129 Phase II Initial Decision*, 64 FCC 2d at 403, para. 883.

[15] *Id.* para. 881.

[16] *Id.* at 409, para. 907.

[17] *Adjustments Report* at 72-73.

[18] The ALJ emphasized that:

> working capital is intended to provide only for the current day-to-day needs of the business and not for any of the capital requirement. Second, working capital is the amount of dollars that are necessary to meet current needs, not the amount of dollars that a public utility would like to have on hand or might actually have on hand.

Docket 19129 Phase II Initial Decision, 64 FCC 2d at 403, para. 881.

banks, in lieu of fees, for services provided to that account."[19] Minimum bank balances requirements are established by the banks. They are not average daily cash balances determined by Pacific. Therefore, we must reject Pacific Bell's position that the average daily cash balances should be included in cash working capital.

8. *Apparent Violation No. 2:* The independent auditor found that, in its computation of cash working capital, Pacific Bell used amounts in Account 7250, Provision for deferred operating income taxes-net. The independent auditor stated that this practice is contrary to the Commission's *Docket 86-497 Reconsideration Order*, because it incorporates noncash transactions in the development of cash working capital.[20] As a result of this inclusion, the independent auditor estimates that Pacific Bell's interstate revenue requirements for January 1988 through March 1989 were overstated by $983,000.[21] Pacific Bell admits that including Account 7250 in its computation of cash working capital was incorrect, and agrees to correct its computer logic to exclude Account 7250 balances from cash working capital calculations.[22]

9. Account 7250 represents the normalization of book-to-tax timing differences and does not represent actual payments to the Internal Revenue Service. Consequently, the amounts in this account do not represent cash transactions and should not be included in the computation of cash working capital.[23] As Pacific Bell admits, inclusion of those amounts is inconsistent with our cash working capital requirements.

B. Lack of Documentation and Other Apparent Errors

10. *Apparent Violation No. 3:* One element of a reliable accounting system is records that support accounting entries. Section 220(c) of the Communications Act recognizes this by authorizing the Commission to have access to and the right of inspection and examination of "all accounts, records, and memoranda, including all documents, papers, and correspondence . . . kept or required to be kept" by Pacific Bell.[24] Section 220(c) also places "[t]he burden of proof to justify every accounting entry questioned by the Commission . . . on the person making, authorizing, or requiring such entry . . ."[25] In addition, Section 32.12(b) of our rules requires Pacific Bell to keep its accounting records "with sufficient particularity to show fully the facts pertaining to all accounting entries" and to file "[t]he detail records in such manner as to be readily accessible for examination" by Commission representatives.[26]

11. The independent auditor found that Pacific Bell could not locate documentation to support adjustments made in February and March 1988 to reconcile CL revenue estimates for February and March 1988 with actual results. As a consequence, the independent auditor stated that differences between revenues in the company's general ledger and revenues reported to NECA could not be reconciled. Pacific Bell defends its adjustments while admitting that it saved only a summary sheet supporting them. Pacific Bell maintains that it is improper to conclude, based on this lack of documentation, that it overstated its CL revenues.[27]

12. We conclude that Pacific Bell apparently failed to provide the support documentation required under Section 220 of the Act and Section 32.12(b). Therefore, we tentatively find that Pacific Bell's apparent documentation failures would support a conclusion that Pacific Bell fails to keep its accounts, records, and memoranda as prescribed by the Commission.

13. *Apparent Violation No. 4:* The independent auditor found two errors in Pacific Bell's treatment of uncollectible revenues. First, the independent auditor found that Pacific Bell did not report uncollectible revenues to the CL pool for February 1989.[28] The independent auditor stated that this error resulted in a $391,000 understatement in Pacific Bell's reported CL revenue requirement for that month.[29] Second, the independent auditor found that, in adjusting its end user uncollectibles for August 1988, Pacific Bell reported its total end user uncollectibles for that month, rather than the difference between that total and the previously reported amount. This error resulted in a $127,000 overstatement of Pacific Bell's CL revenue requirement for that month, according to the independent auditor. Pacific Bell did not comment on either finding.

14. Pursuant to Section 69.605 of the Commission's rules,[30] the Commission requires carriers to report their records accurately to NECA. In these instances, Pacific Bell apparently did not comply with this requirement.

15. *Apparent Violation No. 5:* Section 32.4310 of the Commission's rules[31] requires that unfunded pension accruals be recorded in Account 4310, Other long-term liabilities. The independent auditor found that Pacific Bell recorded unfunded pension accruals in Account 4360, Other deferred credits, instead of Account 4310, for March, April, and May, 1988, and failed to make retroactive adjustments to reclassify these accruals to Account 4310. The independent auditor also found that, as a result of these failures, Pacific Bell's interstate revenue requirement was understated by $299,000.[32] Pacific Bell did not offer any explanation or argument regarding this finding. We note this finding as an apparent misclassification of these accruals.

16. *Apparent Violation No. 6:* Presubscription revenues are revenues generated when end users predesignate interexchange carriers as their primary interexchange carrier. The independent auditor found that Pacific Bell included these revenues in Account 5081, End user revenue, in violation of Section 32.5081 of the Commission's rules.[33] The independent auditor also found that Pacific Bell's

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[19] *Docket 19129 Phase II Final Decision*, 64 FCC 2d at 76, para. 195 n.102.
[20] *Adjustments Report* at 76 *citing 86-497 Reconsideration Order*.
[21] *October 12 Letter*, Pacific Bell Attachment at 2.
[22] *Adjustments Report* at 76.
[23] *86-497 Reconsideration Order*, 4 FCC Rcd at 1700, paras. 28-32.
[24] 47 U.S.C. §220(c).
[25] *Id.*
[26] 47 C.F.R. §32.12(b).
[27] *Id.* at 75.
[28] *Adjustments Report* at 75.
[29] *October 12 Letter*, Pacific Bell Attachment at 1.
[30] 47 C.F.R. §69.605.
[31] 47 C.F.R. §32.4310.
[32] *Adjustments Report* at 73.
[33] 47 C.F.R. §32.5081.

treatment of these revenues did not follow NECA's reporting procedures, which require carriers to include presubscription revenues in the traffic sensitive pool.[34] This accounting shifted $6,395,000 in Pacific Bell's revenue for January 1988 through March 1989 from the traffic sensitive pool to the CL pool, according to the independent auditor.[35]

17. Pacific Bell asserts that Part 69 does not address the treatment of end user presubscription revenue and that NECA procedures regarding those revenues are unclear.[36] Pacific Bell reasons that "[g]iven that it is a charge to end users and is booked to Account 5081, End user revenue, ... it [is] reasonable to include the revenue in Common Line."[37] Additionally, Pacific Bell contends that it informed NECA twice that it was reporting presubscription revenue to the CL pool and NECA did not object.[38]

18. Pacific Bell's argument regarding the proper treatment of presubscription revenues is based on Section 32.5081, which provides instructions for Account 5081. That rule states:

> §32.5081 End user revenue. This account shall contain the federally tariffed monthly flat rate charge assessed upon end users.[39]

This section supports neither Pacific Bell's inclusion of presubscription revenues in Account 5081 nor the eventual assignment of those revenues to the CL pool. Account 5081 is restricted to the revenue generated by the federally tariffed monthly flat rate charge assessed upon end users under §69.104.[40] Account 5081 was established to identify and monitor the revenue from this charge.[41] Thus, Account 5081 does not include additional amounts, like presubscription revenues, even though they are tariffed amounts charged to end users.[42] Presubscription revenues relate to the switched message toll service, and carriers must include them in Account 5082, Switched access revenue,[43] which is assigned to the traffic sensitive element as miscellaneous service revenues. Apparently Pacific Bell not only reported these revenues to the wrong NECA pool, but also recorded them in the wrong account.

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[34] *Adjustments Report* at 74; *see also Pool Administrative Procedures (Cost Company), Section 5, Traffic Sensitive Pool and Lifeline Assistance Reporting*, 42. (Oct. 1990).
[35] *October 12 Letter*, Pacific Bell Attachment at 1.
[36] *Adjustments Report* at 74.
[37] *Id.* at 74-75.
[38] *Id.* at 75.
[39] *Id.*
[40] 47 C.F.R. §69.104.
[41] Amendment of Part 31, Uniform System of Accounts for Class A and Class B Telephone Companies of the Commission's Rules and Regulations and conforming amendments to Annual Report Form M and FCC Report 901, CC Docket No. 83-1347, Report and Order, 99 FCC 2d 58, 59 (1984).
[42] The prescription process was developed several years after Account 5081 was established and revenues generated by the process were not considered in determining what to include in Account 5081.
[43] 47 C.F.R. §32.5082.

Attachment B

PACIFIC BELL - Summary of Apparent Violations

INTERSTATE REVENUE REQUIREMENT OVERSTATEMENT FOR THE AUDIT PERIOD (See Note) ($000)

COMMISSION FINDING	CARRIER	TOTAL	COMMON LINE	OTHER INTERSTATE ACCESS ELEMENTS
1. Included average bank balances instead of minimum bank balances to compute CWC.	Pacific	1,614	851	763
2. Included non-cash item in computing CWC.	Pacific	983	519	464
3. No documentation for CL revenue true-up adjustments.	Pacific		Unknown	
4. Did not report uncollectibles to the NECA common line pool.	Pacific	(391)	(391)	0
4. Reported erroneous uncollectible adjustment to NECA.	Pacific	127	127	0
5. Recorded unfunded pension accruals in wrong account.	Pacific	(299)	(158)	(141)
6. Erroneously reported PICC revenues to common line pool.	Pacific	0	(6,395)	6,395

Note: Overstated expenses are indicated by positive amounts.
Understated expenses are indicated by negative (parentheses) amounts.
Overstated revenues are indicated by negative (parentheses) amounts.
Understated revenues are indicated by positive amounts.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
ML MEDIA PARTNERS, L.P.	)	**DA 95-389**
d/b/a/ MULTIVISION CABLE TV	)	
	)	
Appeal of Local	)	
Rate Order of City of	)	
Hermosa Beach, California	)	

ORDER

Adopted: March 1, 1995 **Released**: March 2, 1995

By the Chief, Cable Services Bureau:

I. INTRODUCTION

1. On April 21, 1994, ML Media Partners, L.P., trading as Multivision Cable TV ("Multivision"), the franchisee in the above-referenced proceeding, filed with the Commission an Appeal from a Rate Decision and Order of the City of Hermosa Beach, California ("Appeal") challenging the local rate order ("local order") adopted by the City of Hermosa Beach, California (the "City").[1] In its local order, the City established rates for basic tier

[1] On May 10, 1994, four days after the deadline for filing oppositions, the City filed its Opposition to the Appeal and a request for a waiver of the deadline. On May 13, 1994, apparently unaware of the City's response, Multivision filed a Reply to an Unopposed Appeal. On May 18, 1994, Multivision also filed a Reply to a Late Opposition and argued that the City's response should be dismissed. The City's Opposition was not timely filed under our rules. *See* 47 C.F.R. § 76.944(b). However, the Commission may accept late-filed materials in appropriate circumstances, upon a showing of good cause. *See* Meredith/New

service, equipment, installations and hourly service charges.[2] As part of this decision setting the basic tier rates, the City found Multivision's collective or package offering of certain individually offered ("a la carte") channels to be a regulated tier of service and, therefore, included those channels as regulated channels for purposes of the local order. The City ordered Multivision to make refunds or to credit subscribers for all payments made in excess of the rates set forth in the local order from period September 1, 1993 through the date of the local order.[3] The City incorporated into its local order the findings of an independent consulting firm hired by the City to review Multivision's Form 393 and a staff report prepared by members of the staff of the Hermosa Beach City Council.

2. In its Appeal, Multivision challenges the City's classification of its a la carte package as a regulated tier of service. Specifically, Multivision argues that the City's decision to treat its a la carte package as a regulated tier of service is contrary to the objectives of the 1992 Cable Act and the Commission's a la carte rules.

3. Under our rules, rate orders made by local franchising authorities may be appealed to the Commission.[4] In ruling on appeals of local rate orders, the Commission will not conduct a *de novo* review, but instead will sustain the franchising authority's decision as long as there is a reasonable basis for that decision.[5] Therefore, the Commission will reverse a franchising authority's decision

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Heritage Strategic Partners, L.P., 9 FCC Rcd 6841 (1994). The City claims only that the Appeal was not directed to the appropriate City staff member which would have permitted a morely timely response. Our rules do not specify that particular employees be served with appeals. Accordingly, we find that the Appeal was timely served on the City and, consistent with Commission precedent, we will not accept the pleading since the City has not shown "good cause" for the late filing of its opposition. It should be noted that nothing in the City's late-filed response would change the determination made herein.

[2] *See* Appeal, Exhibit I, Ordinance Regulating Basic Tier Cable Television Rates and Associated Equipment and Installation Costs and Ordering a Refund to Subscribers, Ordinance No. 94-5666, City of Hermosa Beach, California dated March 22, 1994. The City stayed its local order pending resolution of this Appeal.

[3] Under the Cable Television Consumer Protection and Competition Act of 1992 ("*1992 Cable Act*") Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act of 1934, § 623(b), 47 U.S.C. § 543(b) and the Commission's implementing regulations, local franchising authorities may regulate rates for basic cable service and associated equipment.

[4] 47 C.F.R. § 76.944.

[5] *Rate Order*, 8 FCC Rcd at 5731; and Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Buy-Through Prohibition, Third Order on Reconsideration, MM Docket 92-266, 9 FCC Rcd 4316, 4346 (1994) ("*Third Reconsideration Order*").

only if it determines that the franchising authority acted unreasonably in applying the Commission's rules in rendering its local rate order.[6] If the Commission reverses a franchising authority's decision, it will not substitute its own decision but instead will remand the issue to the franchising authority with instructions to resolve the case consistent with the Commission's decision on appeal.[7] With respect to a determination made by a franchising authority on the regulatory status of an a la carte package as part of its final decision setting rates for the basic service tier, the Commission has stated that "the Commission will defer to the local authority's findings of fact if there is a reasonable basis for the local findings," and the Commission "will then apply FCC rules and precedent to those facts to determine the appropriate regulatory status of the [a la carte] package in question."[8]

II. DISCUSSION

4. Multivision objects to paragraph 2 of the local rate order in which the City disapproves the existing rates for the basic service tier and associated equipment as identified in the FCC Form 393 for reasons contained in the consultant's report and the staff report, all of which are incorporated into the local order by reference.[9] The consultant recommended to the City that Multivision's five-channel a la carte package (WTBS, TNT, E-TV, WGN and The Discovery Channel) be considered a regulated tier of service and that the a la carte channels be included in the benchmark calculations.[10] The staff report stated that Multivision's a la carte package should be treated as a regulated tier of service because the price of the package was deeply discounted compared to the per channel rates; it was impractical to purchase the individual channels as a la carte services; and, the a la carte channels were previously regulated channels. Multivision argues that its a la carte package complies with the provisions of the 1992 Cable Act, which it contends encourage cable operators to unbundle programming services from regulated tiers and offer them on a per-channel basis.[11] Multivision further argues that its a la carte package fully complies with

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[6] *Id.*

[7] *Rate Order*, 8 FCC Rcd at 5732; *Third Reconsideration Order*, 9 FCC Rcd at 4346.

[8] Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Second Order on Reconsideration and Fourth Report and Order, MM Docket No. 92-266, 9 FCC Rcd 4119, 4217 (1994) ("*Second Reconsideration Order*").

[9] Appeal, Exhibit D at 4.

[10] Appeal, Exhibit G at Section II.

[11] *See* Appeal at 8-9.

Commission rules for unregulated treatment existing at the time the package was created.[12]

5. The Multivision a la carte services at issue were first offered to subscribers on September 1, 1993 when Multivision restructured the service offerings on its Hermosa Beach system. Multivision states that in its September 1, 1993 restructuring, it consolidated its basic service tier and cable programming tier into one basic service tier and offered five channels on an individual basis and also as a package which Multivision alleges is not subject to rate regulation. The a la carte package consists of two channels from the basic service tier, two channels from the former cable programming service tier, and one new channel.

6. The facts presented in this Appeal closely resemble the facts presented in one of our letter of inquiry orders, *Cablevision Industries,* Long Beach, California, LOI 93-40, DA 94-1424 (Cab. Serv. Bur., released Dec. 12, 1994), in which we resolved the regulatory status of an a la carte package offered by Cablevision Industries on its Long Beach system that is essentially the same as the a la carte package at issue in this appeal. Specifically, the a la carte package at issue in the *Cablevision Industries* order was a five-channel package that was offered as part of a restructuring that moved five channels from the cable programming services tier and offered them individually and as a package. In the *Cablevision Industries* case, we found we could not say that it was clear that the a la carte package at issue was not a permissible non-rate regulated offering under our rules. We further concluded that in light of the prior confusion over what constituted a permissible non-rate regulated a la carte offering, it would be inequitable to subject the operator to refund liability or to require the operator to restructure its tiers so as to return the channels offered in the a la carte package to regulated tiers.

7. We find that the City's determination that Multivision's a la carte package is a regulated tier is inconsistent with the action taken in the letter of inquiry orders and, in particular, in *Cablevision Industries*. We further find that, in accordance with *Cablevision Industries*, Multivision's a la carte package should not be treated as a rate regulated tier of service. Accordingly, we are remanding this issue to the City so that it can enter an order consistent with our findings in *Cablevision Industries*.

III. ORDERING CLAUSE

8. Accordingly, **IT IS ORDERED** that the Appeal of the local order, with respect to the issue of the regulatory status of Multivision's a la carte package, is **REMANDED**, to the City for resolution in accordance with the terms of this Order.

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[12] Appeal at 28-31; *See Rate Order*, 8 FCC Rcd at 5836-5838; Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, First Order on Reconsideration, MM Docket 92-266, 9 FCC Rcd 1164, 1184 (1993).

9. This action is taken by the Chief, Cable Services Bureau, pursuant to authority delegated by Section 0.321 of the Commission's rules. 47 C.F.R. § 0.321.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	**DA 95-390**
LONG BEACH ACQUISITION	)	
CORP., d/b/a CABLEVISION	)	
INDUSTRIES	)	
	)	
Appeal of Local Rate	)	
Order of the City of	)	
Signal Hill, California	)	

ORDER

Adopted: March 1, 1995 **Released:** March 2, 1995

By the Chief, Cable Services Bureau:

I. Introduction

1. On August 31, 1994, Cablevision Industries ("CVI") filed an Appeal and an Ex Parte Petition for Stay of Enforcement pending Commission review of the local rate order, adopted on August 16, 1994 by the City of Signal Hill, California ("the City").[1] CVI also requested the stay because of a Letter of Inquiry ("LOI") issued by the Commission regarding CVI's a la carte package offerings in Long Beach, California.[2] CVI's Petition for Stay of the local order was granted pending the resolution of this appeal.[3] The local rate

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[1] The City filed its opposition to CVI's appeal on September 13, 1994.

[2] Though the LOI, Federal Communications Commission Letter of Inquiry, File No. LOI 93-40 (issued Dec. 13, 1993), was addressed to CVI's Long Beach, California system, Long Beach and Signal Hill are, in fact, one integrated system and the LOI therefore equally applied to CVI's identical a la carte offerings in Signal Hill.

[3] *Order*, DA 94-1213 (Cab. Serv. Bur., released Nov. 7, 1994.)

order establishes a new schedule of basic service and equipment rates and directs CVI to issue refunds to subscribers for all payments made in excess of the rates set forth in the local order for the period September 1, 1993 through July 14, 1994.[4] As part of its decision setting basic tier rates, the City found CVI's collective or package offering of certain individually offered ("a la carte") channels to be a regulated tier of service and, therefore, included those channels as regulated channels for purposes of the local order.

2. Under our rules, rate orders made by local franchising authorities may be appealed to the Commission.[5] In ruling on appeals of local rate orders, the Commission will not conduct a *de novo* review, but instead will sustain the franchising authority's decision as long as there is a reasonable basis for that decision.[6] Therefore, the Commission will reverse a franchising authority's decision only if the Commission determines that the franchising authority acted unreasonably in applying the Commission's rules in rendering its local rate order.[7] If the Commission reverses a franchising authority's decision, it will not substitute its own decision but instead will remand the issue to the franchising authority with instructions to resolve the case consistent with the Commission's decision on appeal.[8] With respect to a determination made by a franchising authority on the regulatory status of an a la carte package as part of its final decision setting rates for the basic service tier, the Commission has stated that "the Commission will defer to the local authority's findings of fact if there is a reasonable basis for the local findings," and the Commission "will then apply FCC rules and precedent to those facts to determine the appropriate regulatory status of the [a la carte package] in question."[9]

3. CVI objects to the City's decision that maximum initial permitted rates for basic services shall be calculated by treating CVI's a la carte package ("Expanded Program

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[4] Under the Cable Television Consumer Protection and Competition Act of 1992 and the Commission's implementing regulations, local franchising authorities may regulate rates for basic cable service and associated equipment. *See* Cable Television Consumer Protection and competition Act, Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(b), *as amended*, 47 U.S.C. § 543(b) (1992).

[5] 47 C.F.R. § 76.944 (1993).

[6] *See* Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Report and Order, MM Docket 92-266, 8 FCC Rcd 5631, 5837 (1993) ("*Rate Order*"); and Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Buy-Through Prohibition, Third Order on Reconsideration, MM Docket No. 92-266 and 92-262, 9 FCC Rcd 4316, 4346 (1994) ("*Third Reconsideration Order*").

[7] *Id.*

[8] *Rate Order*, 8 FCC Rcd at 5732; *Third Reconsideration Order*, 9 FCC Rcd at 4346.

[9] *Second Reconsideration Order*, 9 FCC Rcd at 4217.

Package"), consisting of American Movie Classics, Cable New Network, Turner Network Television, The Discovery Channel and The Nashville Network, as a rate regulated offering. CVI argues that its a la carte package conforms with Commission rules for unregulated treatment of a la carte packages.[10] CVI also objects to the City's manual recomputation of CVI's rates on Form 393. We address each issue in turn.

II. DISCUSSION

A. CVI's A La Carte Offerings

3. CVI objects to the City's finding that the channels comprising its Expanded Program Package must be included as regulated channels. CVI argues that its a la carte package complies with the provisions of the 1992 Cable Act, which it contends encourage cable operators to unbundle programming services from regulated tiers and offer them on a per-channel basis, and that the package complies with the Commission's a la carte rules in effect at the time the package was created.[11] CVI further argues that the City's reliance upon the 15 interpretive guidelines announced by the Commission in March, 1994 to determine the regulatory status of CVI's a la carte channels constituted "retroactive rulemaking."[12] The City responds that it properly applied the Commission's guidelines on a la carte packages and concluded that the channels in CVI's package should be treated as regulated channels.

4. The CVI a la carte package at issue was first offered to subscribers on September 1, 1993, when CVI restructured the service offerings on the system that serves the City. CVI states that its September 1, 1993 restructuring involved offering five channels that previously had been offered on its former cable programming service tier on an individual basis and also as a package that CVI alleges is not subject to rate regulation.

5. The issue raised by CVI's appeal already has been resolved in one of our letter of inquiry orders, *Cablevision Industries*, Long Beach, California, LOI-93-40, DA 94-1424 (Cab. Serv. Bur., released Dec. 12, 1994) ("*Cablevision Industries*"). In *Cablevision Industries*, we found we could not say that it was clear that the Expanded Program Package offered by CVI on its system which serves Long Beach, California was not a permissible non-rate regulated offering under our rules. We further concluded that in light of the prior confusion over what constituted a permissible non-rate regulated a la carte offering, it would

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[10] *See Rate Order*, 8 FCC Rcd at 5836-5838; *Second Reconsideration Order*, 9 FCC Rcd at 4213.

[11] *See Rate Order*, 8 FCC Rcd at 5836-5838.

[12] In the *Second Reconsideration Order*, the Commission set out 15 guidelines "that local authorities and the Commission should consider in assessing in an individual case whether an 'a la carte' package enhances consumer choice and does not constitute an evasion of rate regulation." *Second Reconsideration Order* at 4214.

be inequitable to subject CVI to refund liability or to require CVI to restructure its tiers so as to return the channels offered in the a la carte package to regulated tiers. Instead, we found that, on a prospective basis, the Expanded Program Package may be treated as a new product tier under the Commission's *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Sixth Order on Reconsideration, Fifth Report and Order*, MM Docket Nos. 92-266 and 93-215, FCC 94-286 (released November 18, 1994) ("*Going Forward Order*").[13]

6. We find that the City's determination in its rate order that the channels comprising CVI's a la carte package must be included as regulated channels is inconsistent with the action taken in *Cablevision Industries*. We further find that, in accordance with *Cablevision Industries*, CVI's a la carte package should not be treated as a rate-regulated tier of service. Accordingly, CVI's appeal is granted on this issue and we remand the decision to the City for further proceedings consistent with this ruling.[14]

B. Manual Recomputation of CVI's Rates

7. CVI also contends that the City erred by manually recomputing its rates on Form 393 instead of relying on the Commission's computer spreadsheet version of Form 393 which is how CVI calculated its rates. CVI claims that the computer version of Form 393 resulted in rates that differed by one cent for each tier/package of service. In its opposition, the City states that CVI submitted a certified copy of the spreadsheet that reflects the $0.01 increase. The City further states that it will make the appropriate adjustment in CVI's rates. Therefore, this issue is dismissed as moot.

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[13] New product tiers are cable programming services that, subject to certain conditions, are not rate regulated. *Going Forward Order* at ¶¶ 16-37. In the *Going Forward Order*, the Commission reconsidered its regulatory treatment of collective offerings of a la carte channels. Specifically, the Commission determined that such packages are cable programming service tiers within the meaning of Section 3(1)(2) of the 1992 Cable Act and therefore will be subject to our general rate regulation rules. *Id.* at ¶ 51. However, the Commission also stated that with respect to packages created between April 1, 1993 and September 30, 1994, where it is not clear that a particular package was not a permissible offering under the a la carte rules in effect at the time it was created, the package may be treated as a new product tier. *Id.*

[14] We need not address CVI's argument with respect to the "retroactive" application by the City of the 15 guidelines set forth in the *Second Reconsideration Order*, in light of the fact that we grant CVI's appeal on this issue.

III. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that CVI's appeal of the local rate order, with respect to the issue of the regulatory status of its a la carte package, **IS GRANTED** and the local rate order **IS REMANDED** to the City for resolution in accordance with the terms of this Order.

9. **IT IS FURTHER ORDERED** that CVI's appeal of the local rate order, with respect to the issue of manual recomputation of its rates, **IS DISMISSED** as moot.

10. **IT IS FURTHER ORDERED** that our stay of the local rate order which was granted pending resolution of this appeal **IS VACATED**.

11. This action is taken by the Chief, Cable Services Bureau, pursuant to authority delegated by section 0.321 of the Commission's rules. 47 C.F.R. § 0.321 (1993).

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
LOCKHART CABLEVISION (formerly Communications Services, Inc.)	)	**DA 95-491**
Motion to Dismiss Appeal of Local Rate Order of City of Lockhart, Texas (TX0191)	)	

ORDER

Adopted: March 13, 1995 **Released:** March 15, 1995

By the Chief, Cable Services Bureau:

1. On December 15, 1994, Lockhart Cablevision ("Cablevision") filed an appeal of the local rate order, adopted on November 15, 1994 by Cablevision's franchising authority, the City of Lockhart, Texas (the "City"). In the local rate order, the City established regulated rates for basic cable service and associated equipment, provided by Cablevision, as allowed by the Cable Television Consumer Protection and Competition Act of 1992. The local order, according to Cablevision, required Cablevision, *inter alia,* to apply the Form 1200 rates for basic cable service back to September 1, 1993.

2. On February 27, 1995, Cablevision filed with the Commission a motion to dismiss its earlier-filed appeal. In its motion, Cablevision stated that "[r]epresentatives of Cablevision and the City have reached a settlement of this matter," and therefore that "Cablevision no longer wishes to pursue its appeal." There being no opposition,

Cablevision's Motion to Dismiss is granted.[1]

3. Accordingly, **IT IS ORDERED THAT** Cablevision's Appeal of the Local Rate Order of the City of Lockhart, Texas **IS DISMISSED**.

4. This action is taken by the Chief, Cable Services Bureau, pursuant to authority delegated by Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

[1] In a phone conversation on March 8, 1995, the attorney for the City of Lockhart advised the Cable Services Bureau that the City of Lockhart does not oppose Cablevision's Motion to Dismiss.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

US West Communications, Inc. AAD 93-152

ORDER TO SHOW CAUSE

Adopted: February 24, 1995; Released: March 3, 1995

By the Commission:

1. At the direction of this Commission, the National Exchange Carriers' Association, Inc. ("NECA") hired Ernst and Young to conduct an independent audit of carrier-reported adjustments to the Common Line ("CL") revenue pool for 1988 and the first quarter of 1989.[1] Our subsequent review of that Commission-mandated audit revealed apparent violations of our accounting rules and reporting requirements by US West Communications, Inc. ("US West") during the audit period. These apparent violations may have continued beyond the period covered by the audit. This Order to Show Cause sets forth those apparent violations and directs US West to show cause why this Commission should not: (1) issue a Notice of Apparent Liability for Forfeiture ("NAL") for apparent violation of Section 220(d) of the Communications Act of 1934, as amended;[2] (2) require US West to adjust its price cap indexes ("PCIs"); and (3) require US West to improve its internal processes to bring them into compliance with Commission rules and orders.

2. Enforcing our accounting rules and reporting requirements is essential for the Commission to carry out its statutory obligations to ensure that rates for telecommunications services remain just and reasonable. Our ability to carry out these obligations is impaired if we cannot rely upon the information that carriers are required to submit about the costs of their operations and their allocations of those costs, or if those allocations are made improperly. As the telecommunications marketplace continues to diversify, with carriers providing more and more nonregulated services, our enforcement of accounting safeguards will become even more important if we are to continue to protect ratepayers from being overcharged for interstate services.

I. BACKGROUND

3. Our rules require the LECs, on a monthly basis, to report to NECA their revenue, expense and investment data. NECA uses to compute each LEC smonthly pool shares.[3] Because LECs do not have complete data available when they first report to NECA, the LECs initially report estimated data. In the following months, the LECs are required to reconcile their estimates with actual results. To ensure the accuracy of the reconciliation process, and because even the best accounting systems sometimes fail to prevent errors, NECA procedures allow the LECs twenty-four months to reconcile and correct previously submitted data. Thus, in each monthly "settlement cycle," LECs report estimated data for the current month as well as adjusted data for the preceding 24 months.

4. In the December 1988 settlement cycle, certain LECs reported unusually large adjustments to the CL pool. Commission staff audited the larger of these adjustments and found that they appeared to have been encouraged by NECA Board members representing the BOCs and further found these adjustments apparently inconsistent with the Commission's rules. As a result, the Commission issued *Notices of Apparent Liability for Forfeiture and Orders to Show Cause* against the BOCs that filed these adjustments.[4] The Commission also issued a letter of reprimand to the NECA Board of Directors and required, *inter alia,* that NECA hire an independent auditor to perform a comprehensive audit of significant adjustments the BOCs reported to the CL pool for 1988 and 1989.[5]

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[1] NECA collects cost data, including revenue, expense and investment data, from all local exchange carriers ("LECs") on a monthly basis. These data are then used to develop LEC-specific revenue requirements which are designed to recover those LEC-incurred costs that are allocated to the interstate jurisdiction under our jurisdictional separations rules, 47 C.F.R. Part 36. The revenue requirement development process is called "pooling," because, initially, all LEC-submitted cost data are combined ("pooled") based on whether they are non-traffic sensitive (*e.g.,* CL) or traffic sensitive ("TS") in nature. Accordingly, NECA administers two revenue pools. Non-traffic sensitive, CL costs are pooled to develop CL revenue requirements, and TS costs are pooled to develop TS revenue requirements. The revenues required to recover CL costs are collected through (1) carrier common line charges billed to the interexchange carriers; (2) subscriber line charges billed to end users and other customers; and (3) surcharges assessed against special access customers. These charges are set forth in tariffs NECA prepares for pool members, primarily the smaller, independent LECs. Other LECs -- including the Bell Operating Companies ("BOCs") -- currently do not participate in the cost recovery pools and, instead, prepare their own access tariffs. As explained *infra,* however, the pools are calculated based on revenue data provided by all LECs, and revenue data reported to NECA by the large carriers will, therefore, affect the charges of pool members. Moreover, during the time period covered by the audit, our rules required all LECs to participate in the CL pool.

[2] 47 U.S.C. §220(d). Prior to January 1, 1991, i.e., during the audit period, the US West carriers were the Mountain States Telephone and Telegraph Company (Mountain States), Northwestern Bell Telephone Company (Northwestern Bell), and Pacific Northwest Bell Telephone Company (Pacific Northwest). Because this Order to Show Cause is based on the independent audit, we refer to the US West company by these names throughout. The companies now are consolidated into US West Communications, Inc.

[3] 47 C.F.R. §69.605.

[4] *See, e.g.,* Southwestern Bell Telephone Co., *Notice of Apparent Liability for Forfeiture and Order to Show Cause,* 5 FCC Rcd 7179 (1990). The Commission subsequently entered into Consent Decrees with the carriers thus resolving these initial actions without determinations of liability. *See, e.g.,* Southwestern Bell Telephone Co., *Consent Decree Order,* 7 FCC Rcd 7692 (1992).

[5] Letter from Donna R. Searcy, Secretary, FCC, to Lawrence C. Ware, Chairman of the Board of Directors, NECA, 5 FCC Rcd 7183 (1990). The letter identified "significant adjustments" as individual adjustments of $100,000 or more that the BOCs

5. NECA hired the public accounting firm of Ernst & Young to conduct the independent audit. Ernst & Young issued its report which NECA submitted to the Commission.[6] That report included numerous audit findings against the BOCs, including US West. The conduct noted by Ernst & Young has had a substantial impact on the CL pool as well as on the carriers' interstate telecommunications services customers. This is because NECA distributes access tariff revenue based on reported data. Moreover, since the reported adjustments to the CL pool involve misstatements or miscalculations of interstate costs and revenues historically used to develop the reporting carrier's access charges, and, after 1988, its price cap indexes, the reporting carrier's interstate access customers, as well as end users, are affected. Although the independent auditor's report addressed the effects of the BOCs' conduct only on the CL pool, Commission auditors are examining the effect on all interstate telecommunications services. Those of the independent auditor's findings that were directed against US West and that appear to warrant Commission action are the subject of our action here. These findings are summarized below. Attachment A provides the specific details of each finding, the Commission rules that were apparently violated, and the company's response to the findings. Attachment B presents, in tabular form, a summary of the apparent violations and their revenue impacts as revealed by the record to date.

II. THE FINDINGS

6. Section 220(a) of the Communications Act grants to the Commission specific authority to "prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject [to the Act]...."[7] In turn, Section 220(d) authorizes the Commission to impose forfeitures on carriers who do not keep such accounts, records, and memoranda in the manner prescribed by the Commission. The findings in Attachment A appear to reveal conduct by US West that violates Section 220 for the period that is the subject of the audit, namely, the period beginning January 1, 1988, and ending March 31, 1989.[8]

7. The independent auditor's findings that we address here involve the misstatement or miscalculation of $16.2 million of interstate costs and revenues for the period from January 1988 through March 1989. In the aggregate, these misstatements or miscalculations apparently benefited US West to the detriment of the users of US West's interstate services.[9] These misstatements or miscalculations shifted costs between or among access elements, thus apparently overstating or understating US West's interstate revenue requirements for particular services. The seriousness of the misstatements is compounded here not only because of the net impact and the extent of understatements and overstatements, but also because of the scope of the errors or apparent violations and the fact that some of them may have continued to the date of this Order to Show Cause. The findings reveal the US West carriers' failure to maintain their accounts, records, and memoranda in the manner prescribed by the Commission. To the extent that this conduct has continued, it must seriously undermine the Commission's confidence that US West's accounts accurately reflect Commission-mandated accounting practices and reveal the true and lawful costs of US West's interstate services. Moreover, and as explained more fully below, the apparent rule violations and misstatements may very well have led US West to compute price cap indexes which require correction.

8. In the following paragraphs we describe the accounting irregularities that have led us to issue this Order to Show Cause.

A. Apparent Cash Working Capital Violations

9. The independent auditor found twelve instances in which US West's calculation of cash working capital allowances apparently violated Commission rules.[10] These allowances are supposed to reflect the average amount of investor-supplied capital needed to fund carriers' day-to-day operations.[11] The cash working capital allowance is added to a carrier's ratebase, thereby increasing the earnings a carrier is allowed. The independent auditor's findings present apparent violations of varying seriousness. In computing its cash working capital allowance for the audited period, US West did not make certain adjustments in a

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had reported to the CL pool for 1988 and 1989 other than the adjustments that had been addressed in the Commission audit. The independent audit covered the fifteen data months from January 1, 1988 through March 31, 1989, after which time participation in the CL pool became voluntary and all BOCs left that pool. The letter, however, also required that the independent audit "include adjustments reported after [the BOCs] left the pool on April 1, 1989" since carriers were allowed to submit adjustments for up to twenty-four months following a particular data month. *Id.* As a result, the independent audit examined reported CL pool adjustments through March 1991.

[6] The Ernst & Young audit report is hereafter referred to as the "*Adjustments Report.*" On February 11, 1993, the Commission concluded that this audit had complied with Commission directives and had been performed "with a high degree of skill and care," and that the independent auditor had "exercised sound professional judgment reflecting purposes of the [audit] and the information gathered during [its] course." *See* Letter from Donna R. Searcy, Secretary, FCC, to Robert A. McArton, Chairman of the Board of Directors, NECA, 8 FCC Rcd 1315 (1993).

[7] 47 U.S.C. §220(a).

[8] The apparent violations roughly fall into two categories for purposes of potential remedies. First, certain apparent violations found to fall outside the applicable limitations period for assessing forfeitures may, nevertheless, necessitate corrective action by the Commission. For example, the Commission may require adjustments to carrier price cap indexes to eliminate distortions caused by unlawful conduct. Second, other apparent violations, if found to be continuing or to have continued into the period covered by the limitations period, could support Notices of Apparent Liability for Forfeiture under Section 1.80 of the Commission's Rules, 47 C.F.R. §1.80, as well as support other remedies, such as price cap adjustments.

[9] These figures are based on estimates US West provided to the independent auditor. *See* Letter from Bruce Baldwin, President, National Exchange Carrier Association, Inc., to Mr. Gerald P. Vaughan, Deputy Chief, Operations, Common Carrier Bureau, at US West Attachment (Oct. 12, 1992) (*October 12 Letter*). Although those estimates encompass most of the independent auditor's findings, US West did not provide estimates of the impact of certain findings on interstate rates and revenue requirements.

[10] *Attachment A*, at 1-6.

[11] *See Attachment A*, at 6 n.34.

consistent manner, improperly excluded certain cash expenses, and used average daily cash balances instead of required minimum bank balances.[12] From the record, it appears that these practices may have continued beyond the audit period.

B. Apparent Rate Base and Net Income Calculation Violations

10. In the *86-497 Order*,[13] the Commission amended Part 65 of its rules to prescribe principles for determining rate base and net income for all dominant carriers. The amended rules took effect January 1, 1988.[14] To implement the new rules, US West made a retroactive adjustment with NECA in October 1988. The independent auditor found that this adjustment failed to comply with the amended rules because US West failed to treat certain account balances in a manner consistent with Part 65.[15]

C. Apparent Jurisdictional Separations Violations

11. Responsibility for regulating telephone services is shared between this Commission, which regulates interstate service, and state commissions, which regulate intrastate service. Carriers must use a process called jurisdictional separations to apportion their costs and revenues between the state and interstate jurisdictions. The separations procedures are set forth in Part 36 of our rules.[16] The independent auditor found violations in the way that US West performed separations calculations, including the improper assignment of Information Origination/Termination investment and the improper separations treatment of leased operator equipment.[17]

D. Other Apparent Errors

12. The independent auditor also found a number of other apparent rule violations, including violation of Section 32.4999(d) (improper shifting of revenues between accounting periods);[18] violation of Section 69.406 (improper calculation of end user carrier access line charge);[19] and the incorrect reporting of end user revenue.[20] Some apparent rule violations could be characterized as clerical errors. For example, the independent auditor found that US West operating companies could not provide adequate documentation to support revenue and cost adjustments, or did not report such adjustments in a timely manner.[21] In still other cases, US West improperly adjusted its cost allocation manuals and, as a result, submitted incorrect data to the related CL pool.[22] As such errors and other violations accumulate, the data carriers report to NECA under Section 69.605 of our rules[23] and to us under Parts 43 and 65 of our rules[24] become increasingly unreliable. Although these errors may have no current impact on US West's interstate rates, their number and scope persuade us to order US West to show cause why its internal accounting and accounting-related processes should not generally be brought into compliance with Commission rules and orders.

III. DISCUSSION AND CONCLUSION

A. NALs

13. We find that the US West carriers' conduct appears to be inconsistent with their statutory obligation to maintain their accounts, records, and memoranda as prescribed by the Commission. Carriers must accumulate, process, and report their financial and operating data in accordance with very specific Communication requirements because we rely on those data to ensure that interstate telephone rates are just and reasonable. Moreover, we cannot evaluate how well our accounting rules work if carriers disregard or misinterpret these rules. Therefore, where, as appears to be the case with US West, carriers either intentionally violate our rules or fail to maintain the internal systems necessary to ensure compliance with those rules, we believe forfeitures may be appropriate under Section 220 of the Act.[25]

14. Section 220(d) of the Act authorizes us to impose forfeitures of up to $6000 per carrier per day for accounting-related violations.[26] Obviously, any violations that continued throughout the audit period and to the present could trigger substantial sums for the three US West companies. In order to make a determination about the amount of any forfeitures that may lie, we direct US West to state when the conduct cited in paragraphs 8 through 11 and detailed in Attachment A ceased, if ever, and otherwise show cause why notices of apparent liability pursuant to section 1.80 of the Commission's rules should not issue.[27] Although US West's apparent violations began January 1, 1988, we would assess forfeitures only for the period allowed for by the limitations period.[28] US West's response should include a discussion of the appropriate application of the limitations period, and also should identify any mitigating circumstances we should consider in determining forfeiture amounts.[29]

B. Adjustment to Price Cap Indexes

15. As indicated above, US West did not provide estimates of the impact on interstate service rates and revenue requirements of certain conduct described in the independent auditor's findings.[30] So that we may assess the

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[12] *Attachment A*, at 3-6.

[13] Amendment of Part 65 of the Commission's Rules to Prescribe Components of the Rate Base and Net Income of Dominant Carriers, CC Docket No. 86-497, *Report and Order*, 3 FCC Rcd 269 (1987)(*86-497 Order*).

[14] *Id.* at 269, para. 2. These rules codified and extended to carriers, which had not been part of the Bell System, many of the practices prescribed in Docket 19129.

[15] *Attachment A*, at 6-8. *See Adjustments Report* at 97-98.

[16] 47 C.F.R. Part 36.

[17] *Attachment A*, at 8-10.

[18] 47 C.F.R. §32.4999(d). *See Attachment A*, at 10-11.

[19] 47 C.F.R. §69.406. *See Attachment A*, at 12-13.

[20] *Attachment A*, at 11.

[21] *Id.* at 11-12.

[22] *Id.* at 12.

[23] 47 C.F.R. §69.605.

[24] 47 C.F.R. Parts 43, 65.

[25] Section 220(d) provides for forfeitures if a carrier fails to keep its accounts, records and memoranda in the manner prescribed by the Commission.47 U.S.C. §220(d).

[26] 47 U.S.C. §220(d). Prior to December 19, 1989, the forfeiture amount was fixed at $500 per violation per day.

[27] 47 C.F.R. §1.80.

[28] *See* 47 C.F.R. §1.80(c)(2).

[29] *See* 47 U.S.C. §504(b).

[30] *See supra* note 9 . These findings are discussed in paragraphs 13, 20 and 34 of Attachment A.

full impact of US West's conduct, we order the US West carriers to estimate the interstate impact of each of these findings, and to file those estimates with the Commission. This filing shall include estimates of the annual effect of each of the findings on US West's CL, TS, special access, billing and collection, and interexchange costs and revenues for the period beginning January 1, 1988 to the public release date of this Order to Show Cause. We also order US West to submit certain information pertaining to Accounts 4310, 4360 and 7150 as identified in paragraphs 15 through 18 of Attachment A. We also direct US West to provide estimates of the impact on the operating companies' interstate revenue requirements attributable to all conduct discussed in this Order and in Attachment A that continued beyond the period of the audit, and to file these estimates with its response.

16. Since January 1, 1991, the Commission has regulated US West's interstate access charges using the LEC price cap rules.[31] Under these rules, US West's initial price cap indexes were established based upon its projected interstate access revenue requirements for the period July 1, 1990 to June 30, 1991. US West's calculation of those revenue requirements may have reflected the practices detailed in Attachment A. Because, under price cap regulation, each succeeding price cap index for a basket of services is a function of an initial price cap index for that basket, US West's price cap indexes for its interstate services (and, by definition, its interstate rates) would have continued to reflect the impact of any improper practices.[32] Absent Commission action, US West's future indexes would reflect any overstatement as well. Therefore, we order US West to show cause why we should not require it to reduce its current price cap indexes to remove any overstatement.[33]

C. Corrective Action

17. Finally, we tentatively conclude that we should direct the US West carriers to improve their internal processes to bring them into compliance with Commission rules and orders, and we order those carriers to show cause why such action should not be required. We will take any additional actions we believe appropriate, including issuing a further Order to Show Cause, based on US West's response.

IV. ORDERING CLAUSES

18. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j), 220(d), and 504(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i), 154(j), 220(d), & 503(b), and Section 1.701 of the Commission's rules, 47 C.F.R. §1.701, that the US West Telephone Operating Companies SHALL SHOW CAUSE within sixty (60) days of the release of this Order to Show Cause why the Commission should not issue Notices of Apparent Liability for Forfeiture against these companies for failure to keep their accounts, records, and memoranda on the books and in the manner prescribed by the Commission as set out in this Order to Show Cause, including Attachments A and B which are hereby incorporated by reference, and therewith SHALL FILE any and all data and other information required by this Order to Show Cause, including information requested in Attachment A.

19. IT IS FURTHER ORDERED, pursuant to Sections 4(i), 4(j), 201-203, 205, 215, 217-219, and 220 of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i), 154(j), 201-03, 205, 215, 217-19, & 220, and Section 1.701 of the Commission's rules, 47 C.F.R. §1.701, that the US West Telephone Operating Companies SHALL FILE within sixty (60) days of the release date of this Order to Show Cause interstate cost and revenue impact estimates, and certain other information, as specified in paragraph 14, *supra*.

20. IT IS FURTHER ORDERED, pursuant to Sections 4(i), 4(j), 201-203, 205, 215, 217-219, and 220 of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i), 154(j), 201-03, 205, 215, 217-19, & 220, and Section 1.701 of the Commission's rules, 47 C.F.R. §1.701, that the US West Telephone Operating Companies SHALL SHOW CAUSE within sixty (60) days of the release date of this Order to Show Cause why they should not be required to adjust their price cap indexes as specified in paragraph 15, *supra*.

21. IT IS FURTHER ORDERED, pursuant to Sections 4(i), 4(j), 201-203, 205, 215, 217-219, and 220 of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i), 154(j), 201-03, 205, 215, 217-19, and 220, and Section 1.701 of the Commission's rules, 47 C.F.R. §1.701, that the US West Telephone Operating Companies SHALL SHOW CAUSE within sixty (60) days of the release date of this Order to Show Cause why they should not be required to improve their internal processes to bring them into compliance with Commission rules and orders.

22. IT IS FURTHER ORDERED that the Secretary shall send by certified mail a copy of this Order to Show Cause to US West Communications, 1801 California Street, Suite 5200, Denver, Colorado 80202.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Attachment A

1. We present below the apparent violations of the US West carriers based on the findings in the Ernst & Young report that prompt us to issue the accompanying *Order to Show Cause*. For each apparent violation, we summarize the independent auditor's finding and any US West reply. We also present our preliminary evaluation of the record.

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[31] *See Policies and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, 5 FCC Rcd 6786 (1990) (*LEC Price Cap Order*), *Erratum*, 5 FCC Rcd 7664 (Com. Car. Bur.1990), *modified on recon.*, 6 FCC Rcd 2637 (1991) (*LEC Reconsideration Order*), *aff'd, National Rural Telecom Ass'n v. FCC*, 988 F.2d 174 (D.C. Cir. 1993).

[32] *See* 47 C.F.R. §§61.44(b), 61.45(b)-(c).

[33] To achieve this, US West would need to reduce its price cap indexes by the percentage change in its July 1, 1990 to June 30, 1991 projected interstate access revenue requirement that results from the removal of any overstatement. These reductions to the price cap indexes would need to be apportioned among the baskets based on the relative July 1, 1990 to June 30, 1991 projected interstate access revenue requirements in each basket.

In general, the violations are categorized according to the ratemaking component affected. This attachment separates the violations into the following categories: cash working capital, rate base and net income calculations, jurisdictional separations, and other apparent errors. In attachment B, we present the information in the record that describes the impact of these apparent violations on the US West carriers' interstate revenue requirements for the fifteen-month audit period.

A. Cash Working Capital

2. We find twelve instances in which US West's calculation of cash working capital allowances apparently violated Commission requirements. Specifically, US West's development of those allowances apparently violated Sections 65.800 and 65.820(d) and (e) of the Commission's rules, which instruct carriers on how to calculate the interstate rate base.[1] As a result of its cash working capital calculations, US West has been reporting incorrect information to NECA in apparent violation of Section 69.605 of the rules[2] and to the Commission in apparent violation of Section 65.600 of the rules.[3] To the extent this information has been reported in the Commission's automated database, Automated Reporting Management Information System (ARMIS), US West is also apparently violating Section 43.21 of the rules, which requires that data filed in ARMIS to be accurate, complete, and responsive, and certified as such by a senior carrier officer.[4]

3. The elements of lead-lag studies used to calculate cash working capital were set forth in Docket No. 19129[5] and reaffirmed in Docket No. 86-497.[6] Lead-lag studies measure cash inflows and outflows in relation to the time service is rendered. Revenue and expense items that are received or paid before a service is rendered are considered "lead" items, and revenue and expense items that are received or paid after service is rendered are considered "lag" items.[7] Lead-lag studies determine the number of days between receipt of revenues and payment of expenses. The net number of revenue lag days is then multiplied by the average daily cash expenses to determine cash working capital.[8] A positive net lag results in a positive cash working capital allowance, which increases the rate base; a negative one results in a negative allowance, which reduces the rate base.[9] In previous orders, we have set forth the criteria for the inclusion and exclusion of various items in cash working capital calculations, but the general rule is that the net lead or lag is applied to the average daily *cash* expenses.

4. In November 1989, the US West carriers reported adjustments to NECA to remove compensated absences and management incentive payments from their cash working capital calculations. The independent auditor stated that, during its review of these adjustments, it asked US West to document its revised cash working capital studies, but US West informed the independent auditor that the original studies were unavailable. As a substitute, the independent auditor had US West recreate the study it had performed for Iowa, and this recreated study was reviewed as a sample for all states. That review revealed nine errors in the Iowa study.[10] The independent auditor stated that these errors understated US West's CL revenue requirements for Iowa by $70,223 between January 1988 through March 1989. The independent auditor also stated that an assumption that Iowa is representative of all US West study areas would indicate that these errors caused US West's CL and total interstate revenue requirements for that period to be understated by $1,053,345 and $2,634,000, respectively.[11] The specifics of the twelve cash working capital violations that the independent auditor found in the Iowa study area are discussed below.

5. *Apparent Violation No. 1:* Several errors found by the independent auditor illustrate US West's apparent failure to comply with internal company guidelines that were designed to ensure accurate cash working capital calculations. The independent auditor found that US West included management incentive payments in cash working capital calculations in violation of internal guidelines.[12] It is a fundamental accounting principle that companies should treat similar transactions consistently. US West, first of all, has the obligation to establish and maintain good accounting guidelines. Second, it must follow them. If it follows them only part of the time, its results will be distorted.

6. *Apparent Violation No. 2:* The independent auditor also found that Mountain Bell had introduced a new lead-lag study in May 1989, revised this study in November 1989 to exclude compensated absences and management incentive payments, and introduced the revisions retroactive to January 1989.[13] The independent auditor and US West agree that this retroactive implementation is inconsistent with US West's normal procedures.[14] US West explains

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[1] 47 C.F.R. §§65.800, 65.820(d)-(e). These rules require carriers, such as the US West operating companies, to calculate the cash working capital component of their interstate rate bases either by performing lead-lag studies of interstate revenue and expense items or by applying a specified formula. The US West carriers elected to perform lead-lag studies.

[2] 47 C.F.R. §69.605.

[3] 47 C.F.R. §65.600. In these rate of return reports to the Commission, US West is required to "provide full and specific answers to all questions propounded and information requested...." 47 C.F.R. §65.600(b), (d)(1).

[4] 47 C.F.R. §43.21(a).

[5] American Telephone & Telegraph Co., Docket No. 19129, *Phase II Final Decision*, 64 FCC 2d 1, 72-73, para. 187 (1977) (*19129 Phase II Final Decision*), *aff'g Phase II Initial Decision*, 64 FCC 2d 131 (1976) (*19129 Phase II Initial Decision*).

[6] Amendment of Part 65 of the Commission's Rules to Prescribe Components of the Rate Base and Net Income of Dominant Carriers, CC Docket No. 86-497, *Report and Order*, 3 FCC Rcd 269 (1987) (*86-497 Order*), *recon.* 4 FCC Rcd 1697 (1989) (*86-497 Reconsideration Order*), *remanded sub nom.* Illinois Bell Telephone Co. v. FCC, 911 F.2d 776 (D.C. Cir. 1990) (*Illinois Bell I*), *on remand*, 7 FCC Rcd 296 (1991) (*84-497 Decision on Remand*), *affirmed sub nom.* Illinois Bell Telephone Co. v. FCC, 988 F.2d 1254 (D.C. Cir. 1993) (*Illinois Bell II*).

[7] Related terms include "expense lag" (the average net lag of all of a carrier's cash expenses); "revenue lag" (the average net lag of a carrier's revenues); and "net lag" (the net of a carrier's expense lag and revenue lag).

[8] *86-497 Decision on Remand*, 7 FCC Rcd at 297, para. 9.

[9] Annual 1990 Access Tariff Filings, *Memorandum Opinion and Order*, 5 FCC Rcd 4177, 4219 (1990).

[10] *Adjustments Report* at 106-07.

[11] *Id.* at 107; Letter from Bruce Baldwin, President, National Exchange Carrier Association, Inc., to Mr. Gerald P. Vaughan, Deputy Chief, Operations, Common Carrier Bureau, US West Attachment at 2 (October 12, 1992) (*October 12 Letter*).

[12] *Adjustments Report* at 106.

[13] *Id.*

[14] *Id.* at 106-07.

that it reported adjustments for these revisions to NECA along with other adjustments, that the other adjustments were supposed to be retroactive to January 1989, and that it erroneously treated all the adjustments identically.[15]

7. *Apparent Violation No. 3:* The independent auditor found that in 1988 and 1989 Northwestern Bell and Pacific Northwest Bell used a March 1988 lead-lag study that incorrectly included management incentive payments. After discovering this error, the independent auditor stated that US West revised the study to exclude management incentive payments. The revision also updated the basic study using expense data for the entire year of 1988.[16] The independent auditor concluded that US West implemented this revised study retroactive to January 1989, inconsistently with US West's normal procedures.[17] US West does not comment on whether the adjustments were inconsistent with its normal procedures, but asserts that the retroactive adjustments resulted in better and more current data. US West, however, provides no support for this assertion.

8. *Apparent Violations Nos. 4 through 9:* Other independent auditor findings focus upon specific components of US West's cash working capital computations. The independent auditor found that US West improperly excluded particular expenses from its corporate operations expense lag,[18] customer service expense lag,[19] plant nonspecific expense lag,[20] and plant specific expense lag calculations.[21] The independent auditor also found that US West incorrectly included Account 6533, Testing expense, in its plant specific lag study instead of its plant nonspecific lag study.[22] The plant nonspecific lag factor was applied to all plant nonspecific expenses, including Account 6533. The independent auditor further found that US West incorrectly excluded payments required by the Federal Insurance Contribution Act (FICA), the Federal Unemployment Tax Act (FUTA), and the State Unemployment Tax Act (SUTA) from the revised relief and pension lead-lag calculations. These payments should have been included in the calculation of plant specific, plant nonspecific, customer operations, and corporate operations expense lags, according to the independent auditor.[23]

9. *Apparent Violation No. 10:* The independent auditor indicated that US West deducted the portion of federal excise taxes allocated to its interstate operations from its cash working capital allowance. The independent auditor stated that this is unnecessary and that funds to pay the federal excise tax are available for the companies' use from the time they are collected from customers until they are remitted to the government.[24] The independent auditor also stated that this practice understated US West's total interstate revenue requirements for January 1988 through March 1989 by $843,000.[25]

10. US West's apparent failures to follow its own guidelines and to calculate its cash working capital allowances properly strongly suggest that US West's internal accounting safeguards systems may be defective. We are particularly concerned with US West's apparent inability to provide the independent auditor with the studies on which its cash working capital calculations were based. This inability made it necessary for US West to replicate its Iowa study. If this replicated study is representative of all US West study areas, we can only conclude that US West's other cash working capital calculations lacked reliability, given the number of apparent defects in the replicated study. In these circumstances, it appears that in each of its states, US West apparently failed to calculate its cash working capital requirements in accordance with Commission requirements. So we may determine the effect of this failure on interstate rates and revenue requirements, we require US West to show the amounts it claimed for cash working capital for each of its study areas for the audit period and for each succeeding year, as well as the support for those claims. This showing should also include US West's most recent cash working capital study for each study area.

11. *Apparent Violation No. 11:* The independent auditor found that US West incorrectly added noncash items to its cash working capital allowance. The independent auditor explained that US West calculated the federal income tax component of the cash working capital allowance by multiplying the sum of the average daily book balance of Account 7220, Operating income taxes, and the federal portion of Account 7250, Provision for deferred operating income taxes-net, by the federal income tax lag factor (composite revenue lag less federal income tax lag). According to the independent auditor, these amounts do not represent cash transactions, because the amounts in Account 7250 represent the normalization of book to tax timing differences and do not reflect actual tax payments.[26] The independent auditor stated that this practice understated US West's interstate revenue requirements for January 1988 through March 1989 by $1,201,000.[27]

12. In Docket 19129, the Commission determined that the Bell System's cash working capital calculations should not reflect the lag between the time tax liability was incurred for accounting purposes and its collection from

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15 *Id.* at 107.
16 *Id.*
17 *Id.*
18 *Id.* The independent auditor stated that the improperly excluded costs were those recorded in Accounts 6724, Information management; 6725, Legal; 6726, Procurement; and 6728, Other general and administrative expense, as well as in US West's financial services subaccount within Account 6721, Accounting and finance.
19 *Id.* The independent auditor stated that the improperly excluded costs were those recorded in US West's billing and collection services subaccount within Account 6623, Customer services.
20 *Id.* The independent auditor stated that the improperly excluded costs were those recorded in Account 6540, Access expense.
21 *Id.* The independent auditor stated that the improperly excluded costs were those recorded in US West's motor vehicle clearance subaccount within Accounts 6112, Motor vehicle expense; originating fixed wing aircraft clearances subaccount within Account 6113, Aircraft expense; and originating special tools clearances and originating other tools subaccount within Account 6116, Other work equipment expense.
22 *Id.*
23 *Id.* at 106.
24 *Id.* at 103.
25 *October 12 Letter*, US West Attachment at 1.
26 *Adjustments Report* at 103-04.
27 *October 12 Letter*, US West Attachment at 1.

customers.[28] That policy remains in effect today.[29] As a consequence, we find US West's treatment of deferred operating income taxes apparently inconsistent with Commission requirements.

13. *Apparent Violation No. 12:* The independent auditor found that US West used average daily cash balances, instead of minimum bank balances and working cash advances, to compute cash working capital.[30] US West objects to this finding. US West states that the balances used in computations were not the balances in Account 1130, Cash, but were the average minimum daily amounts needed to eliminate overdrafts and other unfunded charges. US West maintains that this procedure complies with sound techniques of modern cash management, as well as our cash working capital requirements.[31]

14. Minimum bank balance are balances "maintained in an account to compensate banks, in lieu of fees, for services provided to that account."[32] In Docket 19129, the Commission determined that minimum bank balances and working cash advances, rather than actual cash balances, should be used to calculate cash working capital.[33] The purpose behind including minimum bank balances is to protect carriers from loss of a return if their money is encumbered because of a bank requirement. The purpose is not to allow carriers to earn a return on whatever money they may have in the bank based on cash management techniques.[34] We reserve judgement on this issue pending our review of US West's support that the bank balances used in its cash working capital calculations were the minimum necessary to avoid bank charges. US West shall provide that support in its response to the accompanying *Order*.

B. Rate Base and Net Income Calculations

15. In the *86-497 Order*, the Commission amended Part 65 of its rules to prescribe principles for determining rate base and net income for all dominant carriers. To calculate its rate base, US West relied upon ISAACS, which is a separations and access charge software system designed to calculate revenue requirements using the procedures specified in Parts 36 and 69 of the Commission's rules. After the amended Part 65 rules took effect January 1, 1988,[35] US West made a retroactive adjustment in October 1988, using a new version of ISAACS. The independent auditor found that this adjustment failed to comply with the amended rules because, in calculating its adjustment, US West failed to treat certain account balances as Part 65 required.[36] The details of these failures are explained below.

16. *Apparent Violation No. 13:* Section 65.830(a)(3) of the Commission's rules[37] requires carriers to deduct the interstate portion of unfunded pension costs in Account 4310, Other long-term liabilities, from the interstate rate base. The independent auditor found that US West did not make an Account 4310 deduction. The independent auditor did not address, however, whether US West had recorded any unfunded pension costs in Account 4310 during 1988.[38]

17. *Apparent Violation No. 14:* Section 65.830(a)(4) of the rules[39] requires carriers to deduct the interstate portion of Account 4360, Other deferred credits, from the interstate rate base to the extent that portion arises from the provision of regulated telecommunications services. The independent auditor found that US West did not deduct its other deferred credits for 1988, but did not specify whether any portion of those credits arose from regulated telecommunications services.[40]

18. *Apparent Violation No. 15:* Section 65.450(b)(2) of the Commission's rules[41] requires that balances in Account 7150, Gains and losses from the disposition of land and artwork, be included in net income for interstate ratemaking purposes, to the extent the property had been used in regulated operations and included in the rate base. The independent auditor stated that US West excluded the balances in Account 7150 from net income. The independent auditor did not address whether US West had used the associated property in regulated operations and included it in the rate base.[42]

19. In each of these cases, the question whether US West violated Commission requirements appears to be depend on details of US West's accounting that the independent auditor did not examine. To determine whether a violation has occurred, we require US West to clarify the contents of these accounts during 1988 in its response to the accompanying *Order*. That response shall state:

> (a) How much, if any, unfunded pension costs US West had recorded in Account 4310 during 1988.
>
> (b) How much, if any, of US West's balance in Account 4360 for 1988 arose from regulated telecommunications services.

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[28] *19129 Phase II Final Decision*, 64 FCC 2d at 76, n.101. Deferred operating income taxes do not reflect cash transactions.

[29] *See 86-497 Reconsideration Order*.

[30] *Adjustments Report* at 98-99.

[31] *Id.* at 103.

[32] *Docket 19129 Phase II Final Decision*, 64 FCC 2d at 76, para. 195 n.102.

[33] *19129 Phase II Final Decision*, 64 FCC 2d at 76, para. 195; *19129 Phase II Initial Decision*, 64 FCC 2d at 409-10, paras. 905-08; *accord 86-497 Reconsideration Order*, 4 FCC Rcd at 1698-99, paras. 17, 22.

[34] The ALJ emphasized that:

> working capital is intended to provide only for the current day-to-day needs of the business and not for any of the capital requirement. Second, working capital is the amount of dollars that are necessary to meet current needs, not the amount of dollars that a public utility would like to have on hand or might actually have on hand.

Docket 19129 Initial Decision, 64 FCC 2d at 403, para. 881.

[35] *89-497 Order*, 3 FCC Rcd at 269, para. 2. These rules codified and extended to carriers which had not been part of the Bell System many of the practices prescribed in Docket 19129.

[36] *Adjustments Report* at 97-98.

[37] 47 C.F.R. §65.830(a)(3).

[38] *Adjustments Report* at 98.

[39] 47 C.F.R. §65.830(a)(4).

[40] *Adjustments Report* at 98.

[41] 47 C.F.R. §65.450(b)(2).

[42] *Adjustments Report* at 98-99.

(c) How much, if any, of US West's gains and losses from the disposition of land and artwork for 1988 had been used in regulated operations and included in the rate base.

20. *Apparent Violation No. 16:* Section 65.450(a) of the rules.[43] requires carriers to treat the interstate portions of their balances in Accounts 7110, Income from custom work, 7140, Gains and losses from foreign exchange, and Account 7160, Other operating gains and losses, as deductions from the expenses used to calculate net income. The independent auditor found that US West's October 1988 adjustment made no such deductions.[44] We find that these failures apparently violated Section 65.450(a).

C. Jurisdictional Separations

21. *Apparent Violation No. 17:* Effective January 1, 1988, the Commission adopted Section 36.142(a) of the rules,[45] which requires certain carriers, including the US West carriers, to apportion all their information origination/termination (IOT) equipment costs,[46] other than those for coinless pay telephone equipment and detariffed customer premises equipment, between the federal and state jurisdictions. Section 69.303(b) of the Commission's rules, in turn, requires LECs to apportion the interstate portion of that investment between the special access and CL elements "on the basis of the relative number of equivalent lines in use."[47]

22. The independent auditor found that US West directly assigned a portion of its IOT investment for 1988 to special access. The independent auditor also found that US West should have retroactively reversed this direct assignment, thus increasing the average net investment that would ultimately have been reported to the CL pool.[48] Because US West did not provide an estimate of this finding's interstate revenue requirement impact, the independent auditor did not estimate its revenue requirement impact.

23. US West states it is unable to find a Commission decision, letters of interpretation, or other Commission document, that existed in 1988 that precluded the direct assignment of IOT investment. US West asserts that, consequently, it appropriately changed its treatment of IOT beginning in 1989.

24. The interpretative document US West seeks is Section 36.142(a) of the Commission's rules. That rule distinguishes among three types of IOT equipment: coinless pay telephone equipment, customer premises equipment, and other IOT. With regard to other IOT type, the rule states:

> The costs of other information origination/termination equipment are allocated pursuant to the factor that is used to allocate subcategory 1.3 Exchange Line C&WF [cable and wire facilities].[49]

Section 36.142(a) makes clear that US West's direct assignment of IOT to private line is improper. Because Section 36.142(a) took effect January 1, 1988,[50] US West should have eliminated its direct assignment of IOT investment as of that date.

25. *Apparent Violation No. 18:* Section 36.2(c)(1) of the Commission's rules[51] requires that, if substantial in amount, revenues and expenses related to property rented by a telephone company to an affiliate be excluded from the jurisdictional separations process. Mountain Bell leased traffic operator position system (TOPS) consoles and other equipment to US West Service Link, another US West subsidiary. The independent auditor found that Mountain Bell excluded the investment, reserves, and expenses, but not the lease revenues associated with this transaction, from the jurisdictional separations process. These revenues were recorded in Account 5240, Rent revenue. Because rent revenues are deducted from plant expenses in the separations process, the expenses reported to the CL pool were understated, according to the independent auditor.[52]

26. In addition, the independent auditor found that Mountain Bell excluded too much investment, thus understating the investment reported to the CL pool. According to the independent auditor, this understatement occurred because Mountain Bell had misclassified the leased equipment. In accordance with US West accounting procedures, the leased equipment should have been recorded in Account 2220, Operator system, under field reporting code 117C. Using this account and field code, US West instituted a separations procedure to identify and exclude the equipment. The equipment, however, had been misclassified in Account 2212, Digital electronic switching, under field reporting code 377C. The independent auditor stated that this misclassification resulted in an overstatement of the investment excludedx from the jurisdictional separations process.[53]

27. We find that these US West practices apparently violate Section 36.2(c)(1). The independent auditor stated that these violations understated US West's total interstate revenue requirements for January 1988 through March 1989 by $295,000. This understatement reflects a $194,000 understatement in US West's CL revenue requirements, a $607,000 understatement in US West's TS revenue requirements, a $121,000 overstatement in US West's special ac-

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[43] 47 C.F.R. §65.450(a).
[44] *Adjustments Report* at 98-99.
[45] 47 C.F.R. §36.142(a).
[46] IOT equipment consists of electronic devices and supporting equipment used to originate and terminate telecommunication messages at the end users' premises. *See* 47 C.F.R. Part 36, Appendix. It includes station apparatus such as telephone and miscellaneous equipment, teletypewriter equipment, small private branch exchanges, and radio equipment (excluding mobile) installed for the end users' use. It also includes embedded customer premise wiring, large private branch exchanges, public telephone terminal equipment, and other terminal equipment. *See* 47 C.F.R. §36.141(a).
[47] 47 C.F.R. §69.303(b).
[48] *Adjustments Report* at 117.
[49] 47 C.F.R. §36.142(a).
[50] MTS and WATS Market Structure, Amendments to Part 67 (New Part 36) of the Commission's Rules and Establishment of a Federal-State Joint Board, CC Docket Nos. 78-72 and 86-271, *Report and Order*, 2 FCC Rcd 2639 (1987).
[51] 47 C.F.R. §36.2(c)(1).
[52] *Adjustments Report* at 110.
[53] *Id.*

cess revenue requirements, and a $2000 understatement in US West's billing and collection category, according to the independent auditor.[54]

E. Other Apparent Errors

28. *Apparent Violation No. 19:* The independent auditor found that in nine states, US West shifted special access revenues from the pooling period beginning January 1, 1988 and ending March 31, 1989 to the pooling period beginning April 1, 1989 and ending February 28, 1990.[55] The independent auditor states that US West shifted these revenues by reporting adjustments to Account 5083, Special access revenue.[56] US West explains that it processed a large number of billing credits to special access customers over several months. US West states that it "back[ed] out" the credit estimates from the month they were booked and reported them as adjustments to past months in which the overbillings originated. US West states that these "normalizing" adjustments were routine.[57]

29. We find, however, that this conduct appears to violate Section 32.4999(d) of the Commission's rules,[58] which requires carriers to record revenue when it is actually earned. We find unpersuasive US West's explanation that these were normalizing adjustments compelled by its processing large numbers of billing credits to special access surcharge customers. Under Section 32.4999(d), US West should have recorded the special access surcharge credits in the accounting period of their issuance, not during a prior period.[59] These apparent violations shifted a total of $151,583 in credits between periods, according to the independent auditor.

30. *Apparent Violation No. 20:* The independent auditor found that in Minnesota, US West booked prior period revenue adjustments for premium and nonpremium access revenues in 1988, instead of in the periods in which they originated.[60] The independent auditor stated that this practice shifted $671,000 in revenues from prior periods into 1988.[61] US West acknowledges that it inadvertently failed to report these adjustments as pertaining to the month the adjustment originated, but instead reported them in the month the revenues were booked. US West states, in addition, that this finding involves only a timing difference, since it reported all revenues to NECA.[62] Again, US West's arguments as to inadvertent error do not alter the fact that its conduct apparently violates Section 32.4999(d), which requires carriers to record revenue when it is actually earned.

31. *Apparent Violation No. 21:* The independent auditor found that in September 1988, US West erroneously overstated its end user revenues in Iowa, Minnesota, Nebraska, North Dakota, and South Dakota by a total of $184,164. The independent auditor also found that in October 1988, US West reversed this error twice, thus understating its CL revenues for 1988 by the same amount.[63] Both the original error and this double reversal resulted in apparent violations of Section 32.5081 of the Commission's rules, because end user revenue was not properly recorded.[64]

32. *Apparent Violation No. 22:* The independent auditor found that US West could not document $187,005 in revenues it reported to the CL pool for September 1988. The independent auditor stated that these revenues were for carrier access billing adjustments in Nebraska relating to 1986 and 1987.[65] US West acknowledges that these adjustments are unsupported by original source documentation. We conclude that in this instance, US West apparently failed to comply with Section 32.12(b) of the Commission's rules,[66] which requires carriers to keep their financial records with sufficient particularity to show fully the facts pertaining to their accounting entries.

33. *Apparent Violation No. 23:* The independent auditor also found that US West was unable to document $191,018 in revenues it reported to the CL pool for July 1988. According to the independent auditor, these revenues were for carrier access billing adjustments to AT&T's bill in Nebraska.[67] US West acknowledges that it could supply only worksheets from its interexchange carrier service center to detail the adjustment and identify the originating period.[68] In this instance, US West also apparently failed to comply with Section 32.12(b).

34. *Apparent Violation No. 24:* In the *Joint Cost Order*,[69] the Commission required LECs with annual operating revenues of $100 million or more to file manuals that allocate their costs between regulated and nonregulated activities.[70] The independent auditor noted that US West estimated its nonregulated costs in early 1988, and in October 1988, updated these estimates based on the cost allocation manual approved by the Commission. One of the updates concerned a subaccount US West maintained within Account 5240, Rent revenues, to track compensation its intrastate operations pay each other for support.[71] The independent auditor found that US West included the nonregulated portion of this subaccount in its cost studies for January through August 1988, and that this caused CL expenses to be overstated for some states (overstatements totalling

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[54] *October 12 Letter*, US West Attachment at 2.
[55] *Adjustments Report* at 113. The nine states are Arizona, Colorado, Minnesota, Montana, Nebraska, New Mexico, South Dakota, Utah, and Wyoming.
[56] *Id.* at 113-14.
[57] *Id.*
[58] 47 C.F.R. §32.4999(d).
[59] *Id.*
[60] *Adjustments Report* at 116.
[61] *October 12 Letter*, US West Attachment at 3.
[62] *Adjustments Report* at 116-17.
[63] *Id.* at 114.
[64] 47 C.F.R. §32.5081.
[65] *Adjustments Report* at 115.
[66] 47 C.F.R. §32.12(b).
[67] *Id.* at 116.
[68] *Id.*
[69] Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, *Report and Order*, CC Docket No. 86-111, 2 FCC Rcd 1298 (*Joint Cost Order*) *recon.*, 2 FCC Rcd 6283 (1987) (*Joint Cost Reconsideration Order*), *further recon.*, 3 FCC Rcd 6701 (1988) (*Further Reconsideration Order*), *aff'd sub nom.* Southwestern Bell Corp. v. FCC, 896 F.2d 1378 (D.C. Cir. 1990).
[70] This policy is now codified at Section 64.903 of the Commission's rules, 47 C.F.R. §64.903.
[71] The RBOCs frequently centralize at one facility certain operations serving several states. The affiliated companies in the states served by the facility must compensate the company in the state where the facility is located for use of the facility, usually by paying rent.

$222,419) and understated for others (understatements totalling $223,158).[72] This inclusion of nonregulated rent revenue in interstate revenue requirement calculations appears inconsistent with our joint cost requirements.

35. *Apparent Violation No. 25:* Section 69.406(a)(7)[73] of the Commission's rules requires that the interexchange payment and collection expenses in Account 6620, Customer services, that are attributable to the interstate switched access and message toll services, be apportioned among the common line, local switching, and transport rate elements in the samePproportion as Section 69.309 of the rules[74] apportions investments to these three rate elements. The independent auditor found that, instead of apportioning these expenses as prescribed, US West assigned them to the billing and collection category. This apparent error caused US West to understate its CL revenue requirement by $954,000 and its TS revenue requirement by $731,000, and to overstate its billing and collection category by $1,685,000, for the fifteen month period from January, 1988 to March 1989.[75] US West made no response to this finding. We note this as an apparent violation of Section 69.406(a)(7).

36. *Apparent Violation No. 26:* Section 69.406(a)(4) of the Commission's rules[76] requires that the interstate portion of end user payment and collection expenses in Account 6620, Customer services, that are attributable to end user common line access billing be assigned to the CL rate element. According to the independent auditor, US West's jurisdictional separations system properly calculated these expenses. The independent auditor found, however, that US West failed to establish procedures for moving the payment and collection expenses from the jurisdictional separations process into the Part 69 calculations.[77] Consequently, these expenses were not included in the Part 69 assignment to the CL rate element, thus shifting $5,713,000 in US West's CL revenue requirements for January 1988 through March 1989 to the billing and collection category, according to the independent auditor.[78] We find that this shift apparently violated Section 69.406(a)(4).

37. *Apparent Violation No. 27:* The independent auditor stated that in January 1987, the Washington Utilities and Transportation Commission (WUTC) ordered Pacific Northwest Bell (PNB) to capitalize $16,163,000 of interest for intrastate ratemaking purposes. In addition to recording the capitalized interest, PNB recorded deferred taxes of $7,430,000 to recognize that the capitalized interest had been deducted as an expense for tax purposes. Because the tax deferral was wholly intrastate and had to be excluded from interstate allocations, US West instituted procedures to deduct the deferral amount from Account 4100, Net current deferred federal income tax, prior to the separations process and, then, to add the amount to the intrastate jurisdiction in the WUTC reports. US West planned to use this procedure until the WUTC made a final resolution of the capitalized interest.

38. In July 1987, the WUTC reversed its decision to require capitalized interest, and PNB reversed the entries related to that requirement.[79] According to the independent auditor, however, the separations personnel who were responsible for carrying out the temporary regulatory accounting procedure for the deferred tax were never informed of the WUTC decision and continued to deduct the tax deferral from Account 4100 until July 1989.[80] This error resulted in a $7,430,000 understatement of US West's deferred tax liability for 1988 with a resulting overstatement of its interstate rate base. The rate base overstatement, in turn, resulted in a $193,000 overstatement of US West's interstate revenue requirement for 1988.[81] According to the independent auditor, US West decided not to correct this error retroactively because, in its judgment, this $193,000 interstate impact was small.[82]

39. If US West had properly accounted for the ratemaking adjustment ordered by the WUTC, the temporary procedure to eliminate the effect of the deferral on interstate allocations would not have been necessary. When a state commission orders ratemaking treatment that is different from the accounting required by this Commission, Part 32 requires that the affected carriers enter the amounts in their regulated accounts in the manner prescribed by this Commission. Any differences between amounts so recorded and amounts recognized by a state for ratemaking purposes are to be recorded in accounts specifically established for jurisdictional differences. These accounts are Account 1500, Other jurisdictional assets--net, Account 4370, Other jurisdictional liabilities and deferred credits--net, and Account 7910, Income effect of jurisdictional ratemaking difference--net.[83] If US West had used these accounts to record the WUTC capitalized interest requirement, there would have been no need to adjust Account 4100 before separations. Thus, we find that US West not only performed an erroneous adjustment for two years, but also apparently violated the accounting rules related to jurisdictional differences.

40. The apparent errors detailed in paragraphs 27 through 39, above, suggest that US West's internal controls apparently failed to function properly in multiple instances. As a result of such errors, it may be necessary to require adjustments to US West's price cap indexes and take other remedial action depending on the additional information we have directed US West to submit.

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72 *Adjustments Report* at 96-97.
73 47 C.F.R. §69.406(a)(7).
74 47 C.F.R. §69.309.
75 *Adjustments Report* at 108.
76 47 C.F.R. §69.406(a)(4).
77 *Adjustments Report* at 109.
78 *October 12 Letter*, US West Attachment at 2.
79 *Adjustments Report* at 110-11.
80 *Id.*
81 *October 12 Letter*, US West Attachment at 2.
82 *Adjustments Report* at 110-11.
83 47 C.F.R. §§32.1500, 32.4370, 32.7910.

Attachment B

US WEST - Summary of Apparent Violations

INTERSTATE REVENUE REQUIREMENT OVERSTATEMENT FOR THE AUDIT PERIOD (See Note) ($000)

COMMISSION FINDING	CARRIER	TOTAL	COMMON LINE	OTHER INTERSTATE ACCESS ELEMENTS
1. Included management incentive payments in CWC calculations.	US West	(2,634)	(1,053)	(1,581)
2. Erroneous lead/lag study adjustment.	Mountain			
3. Inconsistent retro-active adjustment related to lead-lag study.	Northwestern and Pacific Northwest			
4. Improperly excluded certain expenses from the corporate operations expense lag calculations.	US West			
5. Improperly excluded certain expenses from the customer service expense lag calculations.	US West			
6. Improperly excluded certain expenses from the plant non-specific expense lag calculations.	US West			
7. Improperly excluded certain expenses from the plant specific expense lag calculations.	US West			
8. Improperly included testing expense in the plant non-specific expense lag study.	US West			
9. Improperly excluded certain taxes from the relief and pension lead-lag calculations.	US West			
10. Erroneous deduction of federal excise tax amounts in CWC.	US West	(843)	(381)	(462)

Attachment B

US WEST - Summary of Apparent Violations

INTERSTATE REVENUE REQUIREMENT OVERSTATEMENT FOR THE AUDIT PERIOD (See Note) ($000)

COMMISSION FINDING	CARRIER	TOTAL	COMMON LINE	OTHER INTERSTATE ACCESS ELEMENTS
11. Use of non-cash items in the calculation of CWC.	US West	(1,201)	(577)	(624)
12. Used average daily cash balances instead of minimum bank balances to determine CWC.	US West		Unknown	
13. Did not deduct unfunded pension costs from rate base.	US West	9,982	4,986	4,996
14. Did not deduct other deferred credits from rate base.	US West			
15. Did not include Account 7150, gains and losses in revenue requirement.	US West			
16. Did not deduct accounts 7110, 7140, and 7160 from the revenue requirement.	US West			
17. Used direct assignment of IO/T where not allowed. 69.303(b).	US West		Unknown	
18. Reported erroneous rent revenue to NECA.	US West	(295)	194	(489)
19. Shifted special access surcharge revenues out of the period.	US West	152	152	0
20. Booked prior period revenue adjustments in March and April 1988.	Northwestern	(671)	(671)	0
21. Reversed a revenue error twice.	Northwestern	184	184	0

Attachment B

US WEST - Summary of Apparent Violations

INTERSTATE REVENUE REQUIREMENT OVERSTATEMENT FOR THE AUDIT PERIOD (See Note) ($000)

COMMISSION FINDING	CARRIER	TOTAL	COMMON LINE	OTHER INTERSTATE ACCESS ELEMENTS
22. Unsupported revenue adjustment for September 1988.	Northwestern		Unknown	
23. Unsupported revenue adjustment for July 1988.	Northwestern		Unknown	
24. Inter-area compensation contained non-regulated amounts.	US West	34	32	2
25. Erroneous allocation of interexchange payment and collection expense.	US West	0	(954)	954
26. Erroneous assignment of end user payment and collection expense.	US West	0	(5,713)	5,713
27. Error in booking reversal of capitalized interest and related tax deferral.	US West	193	81	112

Note: Overstated expenses are indicated by positive amounts.
Understated expenses are indicated by negative (parentheses) amounts.
Overstated revenues are indicated by negative (parentheses) amounts.
Understated revenues are indicated by positive amounts.

The sum of the overstatements for Findings # 1 through 9 are shown on the same line as Finding # 1.

The sum of the overstatements for Findings # 13 through 16 area shown on the same line as Finding # 13.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Vision Cable Company of Rhode Island, Inc.	CUID No. RI0005 (Pawtucket, RI)

Benchmark Filing to Justify Cable Programming Service Price

MEMORANDUM OPINION AND ORDER

Adopted: March 30, 1995; Released: April 5, 1995

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. Here we consider a complaint about the price Vision Cable Company of Rhode Island, Inc. ("Vision Cable") was charging for its cable programming service ("CPS") tier in Pawtucket, Rhode Island, CUID No. RI0005. Vision Cable has chosen to attempt to justify its price through a benchmark showing on FCC Form 393. This Order addresses the reasonableness of Vision Cable's price only through May 14, 1994. At a later time we will issue a separate order addressing the reasonableness of the price after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a complete and timely complaint. The filing of a complete and timely complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of- service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with complete and timely CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

II. PROCEDURAL MATTERS

4. The first complete and timely CPS complaint was completed and served on Vision Cable on January 14, 1994 and filed with the Commission on February 1, 1994.

5. Vision Cable attempted to justify its CPS price through an FCC Form 393 filed on February 7, 1994 . Vision Cable amended its justification on May 27, 1994 in response to a Cable Services Bureau Order citing common deficiencies observed in benchmark filings generally[11] and on February 7, 1995 in response to a Cable Services Bureau Public Notice offering operators the opportunity to make optional supplemental filings.[12]

III. DISCUSSION

6. Vision Cable asserts that its monthly CPS tier price of $9.62 is justified by its benchmark filing because its price is equal to the maximum permitted charge as calculated in the filing. Upon review of Vision Cable's Form 393 filing, we have found that it has not correctly calculated its maximum permitted price, and it is therefore appropriate to make the following adjustments to Vision Cable's calculations in Form 393:

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[1] The findings in this Order do not in any way prejudge the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations. However, to the extent the operator has sought to take advantage of the refund deferral period under the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (*"Second Order on Reconsideration"*), the maximum permitted CPS price determined herein might also apply from May 15, 1994 until the date on which the operator implemented its CPS price under the new regulations. *See* para. 3, *infra*. Further, to the extent that the price for the period ending May 14, 1994 is found to be excessive, reductions in Vision Cable's price for the period after May 14, 1994 may be required to reflect the fact that Vision Cable's price during the earlier period, which is used as the starting point to calculate its price for the prospective period, was unreasonable. *See* 47 C.F.R. § 76.922(b)(4)(C).

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992) ("1992 Cable Act"); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] Order in MM Docket No. 92-266, Implementation of Sections of the Cable Consumer Protection and Competition Act of 1992: Rate Regulation, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration*, 9 FCC Rcd at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

[11] *Cable Operators' Rate Justification Filings*, DA 94-526, 9 FCC Rcd 7752 (Cab. Serv. Bur. 1994).

[12] *Public Notice: Cable Services Bureau Announces Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases*, DA 94-1556 (Dec. 29, 1994); *see also Public Notice: Cable Services Bureau Announces Extension of Time to File Under Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases*, DA 95-87 (Jan. 20, 1995).

a. In Column D of Schedule A of Part III of its FCC Form 393, Vision Cable incorrectly entered negative deferred taxes. We therefore recalculate Column D of Schedule A (and subsequent steps) using amounts which were adjusted to zero.

b. In Column G of Schedules A and C of Part III of its FCC Form 393, Vision Cable did not correctly gross-up its tax entries. By placing entries in these columns, Vision Cable confirms that it is a tax-paying entity (i.e., a "C" corporation). However, Vision Cable incorrectly calculated its income tax by simply applying the corporate tax rate to its return on investment. The Commission has stated that tax-paying business entities must gross-up their tax entries in Column G of Schedules A and C (i.e., calculate the tax as a percentage of return on investment plus tax).[13] By understating its tax entries in Column G, an operator reduces its effective rate of return on equipment and installations and thereby could increase its CPS price. We therefore recalculate Column G of Schedules A and C (and subsequent steps) using correctly adjusted tax entries.

c. According to a supplemental schedule attached to its Form 393, Vision Cable's benchmark calculation for its regulated offerings as of September 30, 1992 (Form 393, Part II, Worksheet 2, Line 220) was based upon 44 regulated channels and 24 satellite channels. A review of Vision Cable's channel line-up card, effective September 30, 1992, verified a total of 44 regulated channels and 25 satellite channels. This adjustment increases the benchmark channel rate entered on Line 220 of Worksheet 2. We have recalculated the subsequent worksheets to compute the maximum permitted price.

7. Because of these errors, we conclude that Vision Cable has failed to demonstrate that its price for the CPS tier was not unreasonable. We will therefore set a price for this tier incorporating the adjustments discussed above. In doing so, we must also recalculate the Inflation Adjustment Factor in Form 393, Part II, Worksheet 1. On its amended Form 393, Vision Cable calculated the Inflation Adjustment Factor using data it relied on when it set its CPS price. If based on this data Form 393 indicated that Vision Cable's prices were reasonable, then Vision Cable would have successfully justified its prices under paragraph 94 of the *Third Order on Reconsideration*.[14] However, Vision Cable has not shown that its prices were reasonable, so we must recalculate the Inflation Adjustment Factor on the basis of the most accurate data currently available for the date that Vision Cable timely filed Form 393.[15] On July 29, 1994, the U.S. Department of Commerce released corrected inflation data including Gross National Product Price Index ("GNP-PI") figures of 122.3 for the third quarter of 1992 and 126.5 for the fourth quarter of 1993. Using these GNP-PI figures, we calculate an Inflation Adjustment Factor of 1.037 through January 1994 for CUID No. RI0005.

IV. CONCLUSIONS

8. Upon review of the record herein, and having incorporated the adjustments discussed above, we conclude that Vision Cable's showing supports a maximum reasonable CPS tier price of $9.53 per month (plus franchise fee) for the period February 1, 1994 to May 14, 1994.[16] However, we further determine that the refund at issue is such a de minimis amount that it would not serve the public interest to order a refund.

9. We further conclude that Vision Cable must reflect in its FCC Form 1200 rate filing for the period after May 14, 1994 the fact that Vision Cable's price during the earlier period was unreasonable.[17] We reserve the right to make further adjustments to Vision Cable's price for the period after May 14, 1994 upon completion of our review of Vision Cable's FCC Form 1200 rate filing.

10. We further conclude that Vision Cable has submitted in good faith a timely optional supplemental filing in response to our December 29, 1994 Public Notice.[18] As provided in the Public Notice, we will relieve Vision Cable of its obligation to obtain advance Commission approval of adjustments to its CPS price for one year following the release of this Order.

11. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the January 14, 1994 complaint against the cable programming service price charged by Vision Cable Company of Rhode Island, Inc. in Pawtucket, Rhode Island, CUID No. RI0005, IS GRANTED TO THE EXTENT INDICATED HEREIN AND DENIED TO THE EXTENT INDICATED HEREIN.

12. IT IS FURTHER ORDERED that the benchmark filing submitted by Vision Cable Company of Rhode Island, Inc. with respect to Pawtucket, Rhode Island, CUID No. RI0005, for the period of February 1, 1994 to May 14, 1994, justifies a maximum price of $9.53 per month (plus franchise fee) for the cable programming service tier.

13. IT IS FURTHER ORDERED, pursuant to Section 76.922(b)(4)(c) of the Commission's Rules, 47 C.F.R. § 76.922(b)(4)(c), that Vision Cable Company of Rhode Island, Inc. shall, within 30 days of the release of this Order,

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[13] *First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking*, MM Docket No. 92-266, FCC 93-428, 9 FCC Rcd 1164, 1196 n.92 (1993) ("Our provision to gross-up the return amount for income taxes applies to all tax paying business entities to the extent that they have a state or federal income tax obligation"). *See also Cable Television Rate Regulation Questions and Answers Relating To FCC Form 393*, Question and Answer No. 14 (released July 30, 1993) ("The federal tax expense should be calculated based upon a pre-tax return on investment").

[14] *Third Order on Reconsideration*, MM Docket Nos. 92-266 and 92-262, FCC 94-40, 9 FCC Rcd 4316, 4348 (1994).

[15] See 47 C.F.R. § 76.922(b)(9)(iii) (if a cable operator fails to justify its rates, rates must be adjusted in accordance with the most accurate data available at the time of analysis).

[16] This finding is based solely on the representation of Vision Cable and the modifications described herein. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not be be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

[17] We reviewed Vision Cable's FCC Form 1200 rate filing and confirmed that Vision Cable calculated its rates for the period after May 14, 1994 using the rate that we find in this Order to be unreasonable.

[18] *Public Notice: Cable Services Bureau Announces Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases*, DA 94-1556 (Dec. 29, 1994).

revise its Form 1200 filing with respect to Pawtucket, Rhode Island, CUID No. RI0005, for the period beginning May 15, 1994, to reduce the monthly charge per tier as of March 31, 1994 for Tier 2 (Line A6b) to equal the maximum permitted rate (plus franchise fee).

14. IT IS FURTHER ORDERED that Vision Cable Company of Rhode Island, Inc. shall place into effect, within 30 days after its submission of the revised Form 1200 filing required above, a CPS tier price that reflects the reduction in the CPS rate determined in this Order.

15. IT IS FURTHER ORDERED, pursuant to Section 76.960 of the Commission's rules, 47 C.F.R. § 76.960, that Vision Cable Company of Rhode Island. Inc. shall not be required to obtain advance Commission approval of adjustments to its CPS prices for one year following the release of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Deputy Chief, Cable Service Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Cox Cable Roanoke, Inc. CUID No. VA0151
Roanoke, Virginia

Benchmark Filing to Support
Cable Programming Service Price

MEMORANDUM OPINION AND ORDER

Adopted: March 30, 1995; Released: April 5, 1995

By the Chief, Cable Services Bureau:

1. Here we consider complaints about the price that the above-captioned operator ("Operator") was charging for its cable programming service ("CPS") tier in the community designated above. Operator has chosen to attempt to justify its price through a benchmark showing on FCC Form 393. This Order addresses the reasonableness of Operator's price only through May 14, 1994. At a later date we will issue a separate order addressing the reasonableness of the price after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76. Subpart N, the Commission must review CPS prices upon the filing of a valid complaint. The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with valid CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994; and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

4. The first valid CPS complaint in the franchise area which is the subject of this Order was completed and served on Operator and received by the Commission on September 22, 1993 and September 24, 1993, respectively. Operator filed FCC Form 393 in response; Operator has also filed amended and supplemental Form 393 filings, most recently on February 7, 1995.[11]

5. In its February 7, 1995 amended filing Operator calculated a maximum permitted price for the CPS tier of $12.19 per month.[12] However, Operator's actual price for the CPS tier was $12.31 per month. Thus, Operator has failed to show that its CPS rate is not unreasonable. Furthermore, upon review of Operator's Form 393 filings, we have found that it has not correctly calculated its maximum permitted price, and it is therefore appropriate to make the following adjustments to Operator's calculations in Form 393:

a. In Column G of Schedules A and C of Part III of its FCC Form 393, Operator did not correctly account for its income tax expense. By placing entries in these columns, Operator confirms that it is a

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[1] The findings in this Order do not in any way prejudge the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations. However, to the extent Operator has sought to take advantage of the refund deferral period under the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (1994) (*"Second Order on Reconsideration"),* the maximum permitted CPS price determined herein might also apply from May 15, 1994 until the date on which Operator implemented its CPS price under the new regulations. *See* para. 3, *infra.*Further, to the extent that the price as of March 31, 1994 is found to be excessive, reductions in Operator's price for the period after May 14, 1994 may be required to reflect the fact that Operator's price during the earlier period, which is used as the starting point to calculate its price for the prospective period, was unreasonable. *See* 47 C.F.R. § 76.922(b)(4)(C).

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(c), *as amended,* 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] Order in MM Docket No. 92-266, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration,* 9 FCC Rcd at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration,* 9 FCC Rcd at 4189 n.195.

[11] Operator filed an amended FCC Form 393 on June 28, 1994 in response to a Cable Services Bureau Order citing common deficiencies observed in benchmark filings generally. Cable Operators' Rate Justification Filings, 9 FCC Rcd 7752 (Cab. Serv. Bur. 1994). Operator submitted additional information on February 7, 1995 in response to a Cable Services Bureau Public Notice offering operators the opportunity to make optional supplemental filings. Public Notice: Cable Services Bureau Announces Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases, DA 94-1556 (Dec. 29, 1994) and Public Notice: Cable Services Bureau Announces Extension of Time to File Under Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases, DA 95-87 (Jan. 20, 1995) (together, *Public Notice).*

[12] Operator amended its previous filings by counting rate-regulated and satellite channels and calculating the inflation adjustment in accordance with the principles set out in the *Public Notice.*

tax-paying entity (i.e., a subchapter "C" corporation). However, Operator incorrectly calculated its income tax by simply applying the corporate tax rate to its return on investment. The Commission has stated that tax-paying business entities must gross-up their tax entries in Column G of Schedules A and C (i.e., calculate the tax as a percentage of return on investment plus tax).[13] By understating its tax entries in Column G, an operator reduces its effective rate of return on equipment and installations and thereby could increase its CPS prices. We therefore recalculate Column G of Schedules A and C (and subsequent steps) using correctly grossed-up tax entries.

b. Since Operator restructured its rates, including its equipment rates, on September 1, 1993, the current monthly equipment revenue figure it entered in Part II, Worksheet 1, Line 104 should have been close or identical to its equipment cost on Part III, Step G, Line 34.[14] However, Operator's entries on these two lines varied substantially. Accordingly, on Line 104 we enter the same figure that appears on Line 34, as adjusted pursuant to paragraph 5a, *supra*.

6. Upon review of the record herein, and having incorporated the adjustments discussed above, we conclude that Operator has failed to justify the rate it was charging during the period in question. Operator's showing justifies the maximum reasonable CPS tier price of $12.10 (plus franchise fee) for the period from September 24, 1993 to May 14, 1994.[15]

7. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that the September 22, 1993 complaint against the cable programming service price charged by Operator in CUID No. VA0151, and all other complaints in this franchise area related to the same price, ARE GRANTED TO THE EXTENT INDICATED HEREIN.

8. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47 C.F.R. § 76.961, that Operator shall refund to subscribers in CUID No. VA0151, that portion of the amounts paid for cable programming service for the period from September 24, 1993[16] to May 14, 1994 which exceeded the maximum price for CUID No. VA0151 (plus franchise fee) per month, plus interest to the date of the refund.

9. IT IS FURTHER ORDERED that Operator shall promptly determine the overcharges to CPS subscribers for the stated periods, and shall within 30 days of the release of this Order file a report with the Chief, Cable Services Bureau, stating the cumulative refund amount so determined (including franchise fees and interest), describing the calculation thereof, and describing its plan to implement the refund within 60 days of Commission approval of the plan.

10. IT IS FURTHER ORDERED, pursuant to Section 76.922(b)(4)(C) of the Commission's rules, 47 C.F.R. § 76.922(b)(4)(C), that Operator shall, within 30 days of the release of this Order, revise its Form 1200 filing with respect to CUID No. VA0151, for the period beginning May 15, 1994, to reduce the monthly charge per tier as of March 31, 1994 for Tier 2 (Line A6b) to equal the maximum price in CUID No. VA0151 (plus franchise fee).[17]

11. IT IS FURTHER ORDERED that Operator shall place into effect, within 30 days after its submission of the revised Form 1200 filing required above, prices that reflect the reductions in the CPS rate determined in this Order.

12. IT IS FURTHER ORDERED, pursuant to Section 76.960 of the Commission's rules, 47 C.F.R. § 76.960, that Operator shall not be required to obtain advance approval of adjustments to its CPS price in CUID No. VA0151 for one year following the release of this Order, due to Operator's having submitted in good faith an optional supplemental filing in response to our *Public Notice*.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

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[13] First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 93-428, 9 FCC Rcd 1164, 1196 n.92 (1995) ("Our provision to gross-up the return amount for income taxes applies to all tax paying business entities to the extent that they have a state or federal income tax obligation.") *See also* Cable Television Rate Regulation Questions and Answers Relating to FCC Form 393, Question and Answer No. 14 (released July 30, 1993) ("The federal tax expense should be calculated based upon a pre-tax return on investment.")

[14] *See* Questions and Answers on Completion of FCC Form 393 and Associated Filing Requirements, Question and Answer No. 7 (released Nov. 10, 1993) ("Where operators have restructured equipment rates a s of September 1, 1993 in accordance with our regulations... operators will enter on Line 104 the same, or nearly the same, number as on Line 301.")

[15] This finding is based solely on the representations of Operator and the modifications described herein. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

[16] Our jurisdiction to order a refund dates from the earliest date a valid complaint is filed with the Commission.47 C.F.R. § 76.961(b).

[17] We reserve the right to make further adjustments to Operator's price for the period after May 14, 1994, upon completion of our review of Operator's Form 1200 filing.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Monmouth Cablevision Associates CUID No. NJ0346 (Jackson)

Benchmark Filing to Support
Cable Programming Service Price

MEMORANDUM OPINION AND ORDER

Adopted: March 30, 1995; Released: April 5, 1995

By the Chief, Cable Services Bureau:

1. Here we consider complaints about the price that the above-captioned operator ("Operator") was charging for its cable programming service ("CPS") tier in the community designated above.[1] Operator has chosen to attempt to justify its price through a benchmark showing on FCC Form 393. This Order addresses the reasonableness of Operator's price only through May 14, 1994. At a later date we will issue a separate order addressing the reasonableness of the price after that date.[2]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[3] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a valid complaint. The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[4] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[5] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[6]

3. The Commission's original rate regulations took effect on September 1, 1993.[7] The Commission subsequently revised its rate regulations effective May 15, 1994.[8] Operators with valid CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[9] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[10] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[11]

4. The first valid CPS complaint was completed and served on Operator on October 12, 1993 and received by the Commission on October 18, 1993. Operator filed FCC Form 393 in response; Operator has also filed amended and supplemental Form 393 filings, most recently on February 7, 1995.[12] Operator filed additional information on March 27, 1995, in response to an inquiry by Commission staff.[13]

5. On November 18, 1993, Operator filed a motion to dismiss the October 12, 1993 complaint. Operator argues that the complaint should be dismissed because the complainant (1) included rates and channel offerings on the basic tier, as well as CPS rates and programming, in response to questions 8 and 9 of FCC Form 329 as it then existed; (2) incorrectly indicated in response to question 6 that he was complaining about a rate increase after September 1, 1993, rather than the rate in effect on September 1, 1993; and (3) incorrectly identified the local franchising authority in response to question 2. Operator's assertions do not persuade us that the complaint is invalid or should be dismissed. In general, we will find valid any complaint that states a claim on which relief can be granted and provides adequate information to allow us to process the complaint, despite minor flaws or inaccuracies. We believe this approach best implements the mandate of the 1992 Cable Act. Because the complainant's response to question number 9 includes channels contained on the CPS tier and

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[1] Subsequent to the time period covered by this Order, Operator was purchased by Cablevision of Monmouth, Inc. As required by the context, the term "Operator" as used herein includes Operator's successors in interest.

[2] The findings in this Order do not in any way prejudge the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations. However, to the extent Operator has sought to take advantage of the refund deferral period under the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (1994) (*"Second Order on Reconsideration"*), the maximum permitted CPS prices determined herein might also apply from May 15, 1994 until the date on which Opeartor implemented its CPS price under the new regulations. *See* para. 3, *infra*.Further, to the extent that the price as of March 31, 1994 is found to be excessive, a reduction in Operator's price for the period after May 14, 1994 may be required to reflect the fact that Operator's price during the earlier period, which is used as the starting point to calculate its prices for the prospective period, was unreasonable. *See* 47 C.F.R. § 76.922(b)(4)(C).

[3] Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[4] 47 C.F.R. § 76.956.

[5] 47 C.F.R. § 76.956(b).

[6] *Id.*

[7] Order in MM Docket No. 92-266, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[8] 47 C.F.R. § 76.922(b).

[9] *See Second Order on Reconsideration*, 9 FCC Rcd at 4190, paras. 150-152.

[10] *Id.*

[11] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

[12] Operator's February 7, 1995 submission was made in response to a Cable Services Bureau Public Notice offering operators the opportunity to make optional supplemental filings. Public Notice: Cable Services Bureau Announces Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases, DA 94-1556 (Dec. 29, 1994) and Public Notice: Cable Services Bureau Announces Extension of Time to File Under Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases, DA 95-87 (Jan. 20, 1995) (together, *Public Notice*).

[13] Letter from Jeffrey S. Steinberg, FCC, to Christopher A. Holt, attorney for Operator (Mar. 21, 1995).

because the rates listed in answer number 8 and on the attached bill indicate that the complainant received the CPS tier, we find it reasonable to conclude that the complainant objected to the CPS rate in effect on September 1, 1993 and that he believed that rate was unreasonable. Furthermore, even if complainant incorrectly identified the local franchising authority, that fact has not materially impeded our processing of the complaint.[14] We therefore find the complaint valid and deny Operator's motion to dismiss the complaint.[15]

6. In its February 7, 1995 amended filing, Operator calculated a maximum permitted price for the CPS tier of $10.78 per month. However, Operator's actual price for the CPS tier was $11.04 per month. Thus, Operator has failed to demonstrate that its price for the CPS tier was not unreasonable. Furthermore, upon review of Operator's Form 393 filings, we have found that it has not correctly calculated its maximum permitted price, and it is therefore appropriate to make the following adjustments to Operator's calculations in Form 393:

a. The 1992 Cable Act requires operators to fully unbundle equipment and installation costs from programming costs.[16] The Commission's regulations implement Congress' directive by requiring operators to establish an equipment basket which includes "all costs associated with providing customer equipment and installation.[17] In Part III of FCC Form 393, an operator calculates its total customer equipment and installation costs which constitute the equipment basket. Form 393, Part II, Worksheet 3 unbundles these costs from the operator's total permitted regulated revenues in order to establish its maximum service rates.

b. In reporting its capital costs of leased customer equipment on Form 393, Part III, Schedule C, Operator did not include any costs for remotes. Operator's rate cards indicate that as of September 30, 1992 it leased remotes to customers for a monthly fee, and as of the initial date of regulation it provided remotes at "no fee" per month. Thus, Operator's monthly equipment revenue as of September 30, 1992 on Form 393, Part II, Worksheet 2, Line 204 includes revenue derived from the rental of remotes, but its unbundling figure on Part II, Worksheet 3, Line 301 does not include any costs associated with remotes. Because Operator calculates its permitted programming rates based on its September 30, 1992 regulated revenues and is not subtracting its costs for remotes from these revenues, Operator is recovering the costs associated with its rental of remotes through its charges for the basic and CPS tiers. Such a result is contrary to the statutory and regulatory unbundling requirement. Under our rules, an operator may choose not to charge customers for premises equipment, but it may not recover its costs associated with customer equipment through its programming rates.[18]

c. Because Operator has not reported its equipment costs for remotes, we must calculate a cost based on the best evidence available to us.[19] In order to do so, we examined the Form 393 filings made by Operator's affiliates in the State of New Jersey, and we observed that the reported gross book cost per unit of remotes ranged from $8.01 to $9.20. We then imputed to Operator a gross book cost per remote at the midpoint of this range, or $8.61. We further assumed, consistent with the filings of Operator's affiliates, that the number of remotes in service equalled the number of converters in service, and that Operator's remotes were depreciated according to the same schedule as its converters. Based on these assumptions, we calculated Operator's total annual capital costs for remotes to be $9,758. We therefore increased Operator's annual customer equipment and installation costs on Part III, Step G, Line 32 by $9,758, and made corresponding adjustments to Part III, Step G, Line 34 and Part II, Worksheet 3, Line 301.

d. In its most recent amended filing, Operator entered $13.27 for the basic service tier and $10.78 for the CPS tier as its current monthly rates as of the initial date of regulation on Form 393, Part II, Worksheet 1, Line 101. However, Operator's rate card indicates that its actual monthly rates, exclusive of franchise fees, were $13.58 for the basic tier and $11.04 for the CPS tier. These figures are consistent with Operator's entries on Form 393, Part I and with Operator's Line 101 entries in its earlier Form 393 filings. The instructions to Form 393 require the operator to enter on Line 101 its actual current monthly charges. We have therefore corrected Line 101 to match the figures on Operator's rate card.

e. Operator's Form 393, Part II, Worksheet 1, Line 104 entry does not represent its current monthly equipment revenue as of the initial date of regulation. Instead ofentering its current monthly equipment revenue, as required by the Form 393 instructions, Operator entered a figure based on its prior equipment rates. This observation is confirmed by the fact that Operator's Worksheet 2, Line 204 entry is the same as its Worksheet 1, Line 104 entry. As a result, Operator's Line 104 entry must be revised to reflect its current monthly equipment rev-

[14] We also note that based on the copy of a bill that the complainant attached to his complaint, Operator apparently did not include the name, address, and phone number of the local franchising authority on the bill as required under 47 C.F.R. § 76.952.

[15] Operator has also moved to dismiss complaints that were filed later than the October 12, 1993 complaint. Because we have accepted the earliest complaint as properly filed, we find it unnecessary to rule on Operator's objections to the later filed complaints.

[16] 47 U.S.C. § 543(b)(3).

[17] 47 C.F.R. § 76.923(c).

[18] We also note that according to Operator's rate card, as of the initial date of regulation it offered new and used remotes for sale to subscribers. This practice creates a potential for Operator to recover its costs associated with remotes twice: once through its charges for rate-regulated services, and again through its sales revenues.

[19] *See* Third Order on Reconsideration, MM Docket Nos. 92-266 and 92-262, FCC 94-90, 9 FCC Rcd 4316 at 4348, ¶ 90 (1994); Cable Operators' Rate Justification Filings, DA 94-526, 9 FCC Rcd 7752 (Cab. Serv. Bur. 1994); *see also* TCI Cablevision of Greater Michigan, Inc., CUID Nos. MI0025 *et al.*, DA 95-271, para. 8e (Cab. Serv. Bur., released Feb. 21, 1995).

enue. Since Operator restructured its rates, including its equipment rates, on September 1, 1993 in an attempt to comply with the Commission's regulations, the monthly equipment cost figure it entered on Line 34 of Step G of Part III should have been close or identical to its Line 104 revenue entry.[20] Accordingly, we correct Operator's Line 104 entry to equal Line 34, as adjusted pursuant to paragraph 6c, *supra*.

f. In its most recent amended Form 393 filing, Operator calculated the Inflation Adjustment Factor (Line 127, Worksheet 1, Part II) as of the end of January 1994 using data released by the U.S. Department of Commerce on December 1, 1993. However, Operator's use of January 1994 as the base date through which it calculated the inflation adjustment is impermissible. Based on the date that the earliest valid complaint was served, the instructions to Form 393 permitted Operator an inflation adjustment only through October 1993.[21] Operator cannot be permitted to claim an additional inflation adjustment simply because it later amended its Form 393 filing. We must therefore recalculate the Inflation Adjustment Factor on the basis of the most accurate data currently available for the date that Operator timely filed Form 393.[22] On July 29, 1994, the Department of Commerce released corrected inflation data including Gross National Product Price Index ("GNP-PI") figures of 122.3 for the third quarter of 1992 and 125.7 for the third quarter of 1993. Using these GNP-PI figures, we calculate 1.030 as the Inflation Adjustment Factor through October 1993, the base date Operator should have used in justifying its rates.

7. Upon review of the record herein, and having incorporated the adjustments discussed above, we conclude that Operator has failed to justify the rate it was charging during the period in question. Operator's showing justifies a maximum reasonable CPS tier price of $10.64 (plus franchise fee) for the period from the filing of the earliest complaint to May 14, 1994.[23]

8. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that Operator's motion to dismiss the October 12, 1993 complaint IS DENIED.

9. IT IS FURTHER ORDERED that the October 12, 1993 complaint against the cable programming service price charged by Operator in the area referenced in the caption, and all other complaints in this franchise area related to the same price, ARE GRANTED TO THE EXTENT INDICATED HEREIN.

10. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47 C.F.R. § 76.961, that Operator shall refund to subscribers in the community shown in the caption that portion of the amounts paid for cable programming service for the period from October 18, 1993[24] to May 14, 1994 which exceeded $10.64 (plus franchise fee) per month, plus interest to the date of the refund.

11. IT IS FURTHER ORDERED that Operator shall promptly determine the overcharges to CPS subscribers for the stated period, and shall within 30 days of the release of this Order file a report with the Chief, Cable Services Bureau, stating the cumulative refund amount so determined (including franchise fees and interest), describing the calculation thereof, and describing its plan to implement the refund within 60 days of Commission approval of the plan.

12. IT IS FURTHER ORDERED, pursuant to Section 76.922(b)(4)(C) of the Commission's rules, 47 C.F.R. § 76.922(b)(4)(C), that Operator shall, within 30 days of the release of this Order, revise its Form 1200 filing with respect to the community addressed herein, for the period beginning May 15, 1994, to reduce the monthly charge per tier as of March 31, 1994 for Tier 2 (Line A6b) to equal the maximum permitted price (plus franchise fee).[25]

13. IT IS FURTHER ORDERED that Operator shall place into effect, within 30 days after its submission of the revised Form 1200 filing required above, a price that reflects the reduction in the CPS rate determined in this Order.

14. IT IS FURTHER ORDERED, pursuant to Section 76.960 of the Commission's rules, 47 C.F.R. § 76.960, that Operator shall not be required to obtain advance approval of adjustments to its CPS price in the franchise area addressed herein for one year following the release of this Order, due to Operator's having submitted in good faith an optional supplemental filing in response to our *Public Notice*.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

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[20] *See* Questions and Answers on Completion of FCC Form 393 and Associated Filing Requirements, Question and Answer No. 7 (released Nov. 10, 1993) ("Where operators have restructured equipment rates as of September 1, 1993 in accordance with our regulations . . . operators will enter on Line 104 the same, or nearly the same, number as on Line 301.").

[21] *See* FCC Form 393, page 11, instructions for line 124 (Inflation Adjustment Factor is calculated using "the number of whole months from September 30, 1992 to the date you will submit this form"); 47 C.F.R. § 76.956(a) (operator must file a response within 30 days of the date of service of a complaint).

[22] *See* 47 C.F.R. § 76.922(b)(9)(iii) (if a cable operator fails to justify its rates, rates must be adjusted in accordance with the most accurate data available at the time of analysis).

[23] This finding is based solely on the representations of Operator and the modifications described herein. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

[24] Our jurisdiction to order a refund dates from the earliest date a valid complaint is filed with the Commission.47 C.F.R. § 76.961(b).

[25] We reserve the right to make further adjustments to Operator's price for the period after May 14, 1994, upon completion of our review of Operator's Form 1200 filing.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Monmouth Cablevision Associates	CUID Nos. NJ0127 (Seaside Heights) NJ0128 (Lavallette) NJ0129 (Seaside Park) NJ0213 (Dover Township) NJ0214 (Berkeley Township)

Benchmark Filing to Support
Cable Programming Service Price

MEMORANDUM OPINION AND ORDER

Adopted: March 30, 1995; Released: April 5, 1995

By the Chief, Cable Services Bureau:

1. Here we consider complaints about the price that the above-captioned operator ("Operator") was charging for its cable programming service ("CPS") tier in the communities designated above.[1] Operator has chosen to attempt to justify its price through a benchmark showing on FCC Form 393. This Order addresses the reasonableness of Operator's price only through May 14, 1994. At a later date we will issue a separate order addressing the reasonableness of the price after that date.[2]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[3] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a valid complaint. The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[4] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[5] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[6]

3. The Commission's original rate regulations took effect on September 1, 1993. [7] The Commission subsequently revised its rate regulations effective May 15, 1994.[8] Operators with valid CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[9] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[10] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[11]

4. The first valid CPS complaints in each of the franchise areas which are the subject of this Order were completed and served on Operator and received by the Commission on the dates set forth on Appendix A. Operator filed FCC Form 393 in response; Operator has also filed amended and supplemental Form 393 filings, most recently on February 7, 1995.[12] Operator filed additional information on March 27, 1995, in response to an inquiry by Commission staff.[13]

5. On March 28, 1994, Operator filed a motion to dismiss a complaint filed on February 28, 1994 by the New Jersey Board of Regulatory Commissioners ("New Jersey") that relates to all the franchise areas addressed in this Order. Operator argues that the complaint should be dismissed because New Jersey failed to list the channels included in the CPS tier or otherwise describe the cable programming service at issue. New Jersey filed its complaint on a revised FCC Form 329, released by the Commission in January 1994, that does not require an itemization of the channels in the CPS tier. Operator argues that the revised Form 329 is deficient because it does not request "a description of the cable programming ser-

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[1] Subsequent to the time period covered by this Order, Operator was purchased by Cablevision of Monmouth, Inc. As required by the context, the term "Operator" as used herein includes Operator's successors in interest.

[2] The findings in this Order do not in any way prejudge the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations. However, to the extent Operator has sought to take advantage of the refund deferral period under the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (1994) (*"Second Order on Reconsideration"),* the maximum permitted CPS prices determined herein might also apply from May 15, 1994 until the date on which Opeartor implemented its CPS price under the new regulations. *See* para. 3, *infra.*Further, to the extent that the price as of March 31, 1994 is found to be excessive, a reduction in Operator's price for the period after May 14, 1994 may be required to reflect the fact that Operator's price during the earlier period, which is used as the starting point to calculate its prices for the prospective period, was unreasonable. *See* 47 C.F.R. § 76.922(b)(4)(C).

[3] Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(c), *as amended,* 47 U.S.C. § 543(c) (1993).

[4] 47 C.F.R. § 76.956.

[5] 47 C.F.R. § 76.956(b).

[6] *Id.*

[7] Order in MM Docket No. 92-266, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[8] 47 C.F.R. § 76.922(b).

[9] *See Second Order on Reconsideration,* 9 FCC Rcd at 4190, paras. 150-152.

[10] *Id.*

[11] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration,* 9 FCC Rcd at 4189 n.195.

[12] Operator's February 7, 1995 submission was made in response to a Cable Services Bureau Public Notice offering operators the opportunity to make optional supplemental filings. Public Notice: Cable Services Bureau Announces Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases, DA 94-1556 (Dec. 29, 1994) and Public Notice: Cable Services Bureau Announces Extension of Time to File Under Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases, DA 95-87 (Jan. 20, 1995) (together, *Public Notice).*

[13] Letter from Jeffrey S. Steinberg, FCC, to Christopher A. Holt, attorney for Operator (Mar. 21, 1995).

vice or associated equipment involved and, if applicable, how the service or associated equipment has changed.[14] Operator's argument does not persuade us that New Jersey's complaint is invalid or should be dismissed. The Commission revised Form 329 because experience had shown that the prior Form 329 requested unnecessary information and was confusing to many complainants. Form 329 was therefore revised consistent with the congressional mandate to avoid imposing unnecessarily "technical or complicated" pleading requirements on complainants.[15] In general, we will find valid any complaint that states a claim on which relief can be granted and provides adequate information to allow us to process the complaint. New Jersey has standing to complain as a relevant state government entity,[16] and its complaint taken as a whole clearly relates to Operator's price for the CPS tier. We therefore find New Jersey's complaint valid and deny Operator's motion to dismiss.

6. In its February 7, 1995 amended filing, Operator calculated a maximum permitted price for the CPS tier of $11.24 per month. However, Operator's actual price for the CPS tier was $11.55 per month. Thus, Operator has failed to demonstrate that its price for the CPS tier was not unreasonable. Furthermore, upon review of Operator's Form 393 filings, we have found that it has not correctly calculated its maximum permitted price, and it is therefore appropriate to make the following adjustments to Operator's calculations in Form 393:

a. The 1992 Cable Act requires operators to fully unbundle equipment and installation costs from programming costs.[17] The Commission's regulations implement Congress' directive by requiring operators to establish an equipment basket which includes "all costs associated with providing customer equipment and installation.[18] In Part III of FCC Form 393, an operator calculates its total customer equipment and installation costs which constitute the equipment basket. Form 393, Part II, Worksheet 3 unbundles these costs from the operator's total permitted regulated revenues in order to establish its maximum service rates.

b. In reporting its capital costs of leased customer equipment on Form 393, Part III, Schedule C, Operator did not include any costs for remotes. Operator's rate cards indicate that as of September 30, 1992 it leased remotes to customers for a monthly fee, and as of the initial date of regulation it provided remotes at "no fee" per month. Thus, Operator's monthly equipment revenue as of September 30, 1992 on Form 393, Part II, Worksheet 2, Line 204 includes revenue derived from the rental of remotes, but its unbundling figure on Part II, Worksheet 3, Line 301 does not include any costs associated with remotes. Because Operator calculates its permitted programming rates based on its September 30, 1992 regulated revenues and is not subtracting its costs for remotes from these revenues, Operator is recovering the costs associated with its rental of remotes through its charges for the basic and CPS tiers. Such a result is contrary to the statutory and regulatory unbundling requirement. Under our rules, an operator may choose not to charge customers for premises equipment, but it may not recover its costs associated with customer equipment through its programming rates.[19]

c. Because Operator has not reported its equipment costs for remotes, we must calculate a cost based on the best evidence available to us.[20] In order to do so, we examined the Form 393 filings made by Operator's affiliates in the State of New Jersey, and we observed that the reported gross book cost per unit of remotes ranged from $8.01 to $9.20. We then imputed to Operator a gross book cost per remote at the midpoint of this range, or $8.61. We further assumed, consistent with the filings of Operator's affiliates, that the number of remotes in service equalled the number of converters in service, and that Operator's remotes were depreciated according to the same schedule as its converters. Based on these assumptions, we calculated Operator's total annual capital costs for remotes to be $11,508. We therefore increased Operator's annual customer equipment and installation costs on Part III, Step G, Line 32 by $11,508, and made corresponding adjustments to Part III, Step G, Line 34 and Part II, Worksheet 3, Line 301.

d. In its most recent amended filing, Operator entered $11.24 for the basic service tier and $11.24 for the CPS tier as its current monthly rates as of the initial date of regulation on Form 393, Part II, Worksheet 1, Line 101. However, Operator's rate card indicates that its actual monthly rates, exclusive of franchise fees, were $11.55 for the basic tier and $11.55 for the CPS tier. These figures are consistent with Operator's entries on Form 393, Part I and with Operator's Line 101 entries in its earlier Form 393 filings. The instructions to Form 393 require the operator to enter on Line 101 its actual current monthly charges. We have therefore corrected Line 101 to match the figures on Operator's rate card.

e. Operator's Form 393, Part II, Worksheet 1, Line 104 entry does not represent its current monthly equipment revenue as of the initial date of regulation. Instead of entering its current monthly equipment revenue, as required by the Form 393 instructions, Operator entered a figure based on its prior equipment rates. This observation is confirmed by the fact that Operator's Worksheet 2, Line 204

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[14] 47 C.F.R. § 76.951(b)(6).

[15] *See* H.R. Conf. Rep. No. 862, 102d Cong., 2d Sess. at 64 (1992); *see also* Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 93-177, 8 FCC Rcd 5631, 5843-44, para. 339 (1993).

[16] *See* 47 C.F.R. § 76.950.

[17] 47 U.S.C. § 543(b)(3).

[18] 47 C.F.R. § 76.923(c).

[19] We also note that according to Operator's rate card, as of the initial date of regulation it offered new and used remotes for sale to subscribers. This practice creates a potential for Operator to recover its costs associated with remotes twice: once through its charges for rate-regulated services, and again through its sales revenues.

[20] *See* Third Order on Reconsideration, MM Docket Nos. 92-266 and 92-262, FCC 94-90, 9 FCC Rcd 4316 at 4348, ¶ 90 (1994); Cable Operators' Rate Justification Filings, DA 94-526, 9 FCC Rcd 7752 (Cab. Serv. Bur. 1994); *see also* TCI Cablevision of Greater Michigan, Inc., CUID Nos. MI0025 *et al.*, DA 95-271, para. 8e (Cab. Serv. Bur., released Feb. 21, 1995).

entry is the same as its Worksheet 1, Line 104 entry. As a result, Operator's Line 104 entry must be revised to reflect its current monthly equipment revenue. Since Operator restructured its rates, including its equipment rates, on September 1, 1993 in an attempt to comply with the Commission's regulations, the monthly equipment cost figure it entered on Line 34 of Step G of Part III should have been close or identical to its Line 104 revenue entry.[21] Accordingly, we correct Operator's Line 104 entry to equal Line 34, as adjusted pursuant to paragraph 6c, *supra*.

f. Because Operator has failed to demonstrate that its price for the CPS tier was not unreasonable, we must also recalculate the Inflation Adjustment Factor in Form 393, Part II, Worksheet 1 on the basis of the most accurate data currently available for the date for which Operator filed.[22] In its most recent amended Form 393 filing, Operator calculated the Inflation Adjustment Factor (Line 127, Worksheet 1, Part II) as of the end of January 1994 using data released by the U.S. Department of Commerce on December 1, 1993. On July 29, 1994, the Department of Commerce released corrected inflation data including Gross National Product Price Index ("GNP-PI") figures of 122.3 for the third quarter of 1992 and 126.5 for the fourth quarter of 1993. Using these GNP-PI figures, we calculate 1.037 as the Inflation Adjustment Factor through January 1994, the base date Operator used in justifying its rate.

7. Upon review of the record herein, and having incorporated the adjustments discussed above, we conclude that Operator has failed to justify the rate it was charging during the period in question. Operator's showing justifies a maximum reasonable CPS tier price of $11.16 (plus franchise fee) for the period from the filing of the earliest complaint in each franchise area (as set forth in Appendix A) to May 14, 1994.[23]

8. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that Operator's motion to dismiss the complaint filed February 28, 1994 by the New Jersey Board of Regulatory Commissioners IS DENIED.

9. IT IS FURTHER ORDERED that the complaints referred to in Appendix A against the cable programming service price charged by Operator in the areas referenced in the caption and at Appendix A herein, and all other complaints in these franchise areas related to the same price, ARE GRANTED TO THE EXTENT INDICATED HEREIN.

10. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47 C.F.R. § 76.961, that Operator shall refund to subscribers in the communities shown in the caption that portion of the amounts paid for cable programming service for the period from the filing of the first valid complaint in each franchise area (as set forth on Appendix A[24] to May 14, 1994 which exceeded $11.16 (plus franchise fee) per month, plus interest to the date of the refund.

11. IT IS FURTHER ORDERED that Operator shall promptly determine the overcharges to CPS subscribers for the stated periods, and shall within 30 days of the release of this Order file a report with the Chief, Cable Services Bureau, stating the cumulative refund amount so determined (including franchise fees and interest), describing the calculation thereof, and describing its plan to implement the refund within 60 days of Commission approval of the plan.

12. IT IS FURTHER ORDERED, pursuant to Section 76.922(b)(4)(C) of the Commission's rules, 47 C.F.R. § 76.922(b)(4)(C), that Operator shall, within 30 days of the release of this Order, revise its Form 1200 filings with respect to the communities listed herein, for the period beginning May 15, 1994, to reduce the monthly charge per tier as of March 31, 1994 for Tier 2 (Line A6b) to equal the maximum permitted price (plus franchise fee).[25]

13. IT IS FURTHER ORDERED that Operator shall place into effect,within 30 days after its submission of the revised Form 1200 filings required above, a price that reflects the reduction in the CPS rate determined in this Order.

14. IT IS FURTHER ORDERED, pursuant to Section 76.960 of the Commission's rules, 47 C.F.R. § 76.960, that Operator shall not be required to obtain advance approval of adjustments to its CPS price in the franchise areas addressed herein for one year following the release of this Order, due to Operator's having submitted in good faith an optional supplemental filing in response to our *Public Notice*.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

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[21] *See* Questions and Answers on Completion of FCC Form 393 and Associated Filing Requirements, Question and Answer No. 7 (released Nov. 10, 1993) ("Where operators have restructured equipment rates as of September 1, 1993 in accordance with our regulations . . . operators will enter on Line 104 the same, or nearly the same, number as on Line 301.").

[22] *See* 47 C.F.R. § 76.922(b)(9)(iii) (if a cable operator fails to justify its rates, rates must be adjusted in accordance with the most accurate data available at the time of analysis).

[23] This finding is based solely on the representations of Operator and the modifications described herein. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

[24] Our jurisdiction to order a refund dates from the earliest date a valid complaint is filed with the Commission.47 C.F.R. § 76.961(b).

[25] We reserve the right to make further adjustments to Operator's prices for the period after May 14, 1994, upon completion of our review of Operator's Form 1200 filings.

Appendix A

CUID No.	Date First Complaint Filed with FCC	Date Complaint Served
NJ0127	02/28/94	02/25/94
NJ0128	02/28/94	02/25/94
NJ0129	02/28/94	02/25/94
NJ0213	02/25/94	02/22/94
NJ0214	02/28/94	02/25/94

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Monmouth Cablevision Associates — CUID Nos.
NJ0428 (Freehold)
NJ0429 (Englishtown)
NJ0430 (Manalapan)
NJ0556 (Marlboro)
NJ0557 (Colts Neck)

Benchmark Filing to Support
Cable Programming Service Price

MEMORANDUM OPINION AND ORDER

Adopted: March 30, 1995; Released: April 5, 1995

By the Chief, Cable Services Bureau:

1. Here we consider complaints about the price that the above-captioned operator ("Operator") was charging for its cable programming service ("CPS") tier in the communities designated above.[1] Operator has chosen to attempt to justify its price through a benchmark showing on FCC Form 393. This Order addresses the reasonableness of Operator's price only through May 14, 1994. At a later date we will issue a separate order addressing the reasonableness of the price after that date.[2]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[3] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a valid complaint. The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[4] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[5] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[6]

3. The Commission's original rate regulations took effect on September 1, 1993.[7] The Commission subsequently revised its rate regulations effective May 15, 1994.[8] Operators with valid CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[9] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[10] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[11]

4. The first valid CPS complaints in each of the franchise areas which are the subject of this Order were completed and served on Operator and received by the Commission on the dates set forth on Appendix A. Operator filed FCC Form 393 in response; Operator has also filed amended and supplemental Form 393 filings, most recently on February 7, 1995.[12] Operator filed additional information on March 27, 1995, in response to an inquiry by Commission staff.[13]

5. On March 28, 1994, Operator filed a motion to dismiss a complaint filed on February 28, 1994 by the New Jersey Board of Regulatory Commissioners ("New Jersey") that relates to all the franchise areas addressed in this Order. Operator argues that the complaint should be dismissed because New Jersey failed to list the channels included in the CPS tier or otherwise describe the cable programming service at issue. New Jersey filed its complaint on a revised FCC Form 329, released by the Commission in January 1994, that does not require an itemization of the channels in the CPS tier. Operator argues that the revised Form 329 is deficient because it does not request "a description of the cable programming ser-

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[1] Subsequent to the time period covered by this Order, Operator was purchased by Cablevision of Monmouth, Inc. As required by the context, the term "Operator" as used herein includes Operator's successors in interest.

[2] The findings in this Order do not in any way prejudge the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations. However, to the extent Operator has sought to take advantage of the refund deferral period under the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (1994) (*"Second Order on Reconsideration"*), the maximum permitted CPS prices determined herein might also apply from May 15, 1994 until the date on which Opeartor implemented its CPS price under the new regulations. *See* para. 3, *infra*.Further, to the extent that the price as of March 31, 1994 is found to be excessive, a reduction in Operator's price for the period after May 14, 1994 may be required to reflect the fact that Operator's price during the earlier period, which is used as the starting point to calculate its prices for the prospective period, was unreasonable. *See* 47 C.F.R. § 76.922(b)(4)(C).

[3] Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[4] 47 C.F.R. § 76.956.

[5] 47 C.F.R. § 76.956(b).

[6] *Id.*

[7] Order in MM Docket No. 92-266, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[8] 47 C.F.R. § 76.922(b).

[9] *See Second Order on Reconsideration*, 9 FCC Rcd at 4190, paras. 150-152.

[10] *Id.*

[11] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

[12] Operator's February 7, 1995 submission was made in response to a Cable Services Bureau Public Notice offering operators the opportunity to make optional supplemental filings. Public Notice: Cable Services Bureau Announces Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases, DA 94-1556 (Dec. 29, 1994) and Public Notice: Cable Services Bureau Announces Extension of Time to File Under Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases, DA 95-87 (Jan. 20, 1995) (together, *Public Notice*).

[13] Letter from Jeffrey S. Steinberg, FCC, to Christopher A. Holt, attorney for Operator (Mar. 21, 1995).

vice or associated equipment involved and, if applicable, how the service or associated equipment has changed.[14] Operator's argument does not persuade us that New Jersey's complaint is invalid or should be dismissed. The Commission revised Form 329 because experience had shown that the prior Form 329 requested unnecessary information and was confusing to many complainants. Form 329 was therefore revised consistent with the congressional mandate to avoid imposing unnecessarily "technical or complicated" pleading requirements on complainants.[15] In general, we will find valid any complaint that states a claim on which relief can be granted and provides adequate information to allow us to process the complaint. New Jersey has standing to complain as a relevant state government entity,[16] and its complaint taken as a whole clearly relates to Operator's price for the CPS tier. We therefore find New Jersey's complaint valid and deny Operator's motion to dismiss.

6. In its February 7, 1995 amended filing, Operator calculated a maximum permitted price for the CPS tier of $13.61 per month. However, Operator's actual price for the CPS tier was $14.11 per month. Thus, Operator has failed to demonstrate that its price for the CPS tier was not unreasonable. Furthermore, upon review of Operator's Form 393 filings, we have found that it has not correctly calculated its maximum permitted price, and it is therefore appropriate to make the following adjustments to Operator's calculations in Form 393:

a. The 1992 Cable Act requires operators to fully unbundle equipment and installation costs from programming costs.[17] The Commission's regulations implement Congress' directive by requiring operators to establish an equipment basket which includes "all costs associated with providing customer equipment and installation."[18] In Part III of FCC Form 393, an operator calculates its total customer equipment and installation costs which constitute the equipment basket. Form 393, Part II, Worksheet 3 unbundles these costs from the operator's total permitted regulated revenues in order to establish its maximum service rates.

b. In reporting its capital costs of leased customer equipment on Form 393, Part III, Schedule C, Operator did not include any costs for remotes. Operator's rate cards indicate that as of September 30, 1992 it leased remotes to customers for a monthly fee, and as of the initial date of regulation it provided remotes at "no fee" per month. Thus, Operator's monthly equipment revenue as of September 30, 1992 on Form 393, Part II, Worksheet 2, Line 204 includes revenue derived from the rental of remotes, but its unbundling figure on Part II, Worksheet 3, Line 301 does not include any costs associated with remotes. Because Operator calculates its permitted programming rates based on its September 30, 1992 regulated revenues and is not subtracting its costs for remotes from these revenues, Operator is recovering the costs associated with its rental of remotes through its charges for the basic and CPS tiers. Such a result is contrary to the statutory and regulatory unbundling requirement. Under our rules, an operator may choose not to charge customers for premises equipment, but it may not recover its costs associated with customer equipment through its programming rates.[19]

c. Because Operator has not reported its equipment costs for remotes, we must calculate a cost based on the best evidence available to us.[20] In order to do so, we examined the Form 393 filings made by Operator's affiliates in the State of New Jersey, and we observed that the reported gross book cost per unit of remotes ranged from $8.01 to $9.20. We then imputed to Operator a gross book cost per remote at the midpoint of this range, or $8.61. We further assumed, consistent with the filings of Operator's affiliates, that the number of remotes in service equalled the number of converters in service, and that Operator's remotes were depreciated according to the same schedule as its converters. Based on these assumptions, we calculated Operator's total annual capital costs for remotes to be $36,726. We therefore increased Operator's annual customer equipment and installation costs on Part III, Step G, Line 32 by $36,726, and made corresponding adjustments to Part III, Step G, Line 34 and Part II, Worksheet 3, Line 301.

d. In its most recent amended filing, Operator entered $12.99 for the basic service tier and $13.61 for the CPS tier as its current monthly rates as of the initial date of regulation on Form 393, Part II, Worksheet 1, Line 101. However, Operator's rate card indicates that its actual monthly rates, exclusive of franchise fees, were $13.47 for the basic tier and $14.11 for the CPS tier. These figures are consistent with Operator's entries on Form 393, Part I and with Operator's Line 101 entries in its earlier Form 393 filings. The instructions to Form 393 require the operator to enter on Line 101 its actual current monthly charges. We have therefore corrected Line 101 to match the figures on Operator's rate card.

e. Operator's Form 393, Part II, Worksheet 1, Line 104 entry does not represent its current monthly equipment revenue as of the initial date of regulation. Instead of entering its current monthly equipment revenue, as required by the Form 393 instructions, Operator entered a figure based on its prior equipment rates. This observation is confirmed by the fact that Operator's Worksheet 2, Line 204

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[14] 47 C.F.R. § 76.951(b)(6).

[15] *See* H.R. Conf. Rep. No. 862, 102d Cong., 2d Sess. at 64 (1992); *see also* Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 93-177, 8 FCC Rcd 5631, 5843-44, para. 339 (1993).

[16] *See* 47 C.F.R. § 76.950.

[17] 47 U.S.C. § 543(b)(3).

[18] 47 C.F.R. § 76.923(c).

[19] We also note that according to Operator's rate card, as of the initial date of regulation it offered new and used remotes for sale to subscribers. This practice creates a potential for Operator to recover its costs associated with remotes twice: once through its charges for rate-regulated services, and again through its sales revenues.

[20] *See* Third Order on Reconsideration, MM Docket Nos. 92-266 and 92-262, FCC 94-90, 9 FCC Rcd 4316 at 4348, ¶ 90 (1994); Cable Operators' Rate Justification Filings, DA 94-526, 9 FCC Rcd 7752 (Cab. Serv. Bur. 1994); *see also* TCI Cablevision of Greater Michigan, Inc., CUID Nos. MI0025 *et al.*, DA 95-271, para. 8e (Cab. Serv. Bur., released Feb. 21, 1995).

entry is the same as its Worksheet 1, Line 104 entry. As a result, Operator's Line 104 entry must be revised to reflect its current monthly equipment revenue. Since Operator restructured its rates, including its equipment rates, on September 1, 1993 in an attempt to comply with the Commission's regulations, the monthly equipment cost figure it entered on Line 34 of Step G of Part III should have been close or identical to its Line 104 revenue entry.[21] Accordingly, we correct Operator's Line 104 entry to equal Line 34, as adjusted pursuant to paragraph 6c, *supra*.

f. Because Operator has failed to demonstrate that its price for the CPS tier was not unreasonable, we must also recalculate the Inflation Adjustment Factor in Form 393, Part II, Worksheet 1 on the basis of the most accurate data currently available.[22] In its most recent amended Form 393 filing, Operator calculated the Inflation Adjustment Factor (Line 127, Worksheet 1, Part II) as of the end of January 1994 using data released by the U.S. Department of Commerce on December 1, 1993. However, Operator's use of January 1994 as the base date through which it calculated the inflation adjustment is impermissible for CUID Nos. NJ0428, NJ0430, and NJ0557. Based on the date that the earliest valid complaint was served in each franchise area, the instructions to Form 393 permitted Operator an inflation adjustment only through October 1993 in CUID No. NJ0430, November 1993 in CUID No. NJ0428, and December 1993 in CUID No. NJ0557.[23] Operator cannot be permitted to claim an additional inflation adjustment simply because it later amended its Form 393 filings. We must therefore recalculate the Inflation Adjustment Factor on the basis of the most accurate data currently available for the dates on which Operator should have filed Form 393. On July 29, 1994, the Department of Commerce released corrected inflation data including Gross National Product Price Index ("GNP-PI") figures of 122.3 for the third quarter of 1992, 125.7 for the third quarter of 1993, and 126.5 for the fourth quarter of 1993. Using these GNP-PI figures, we calculate 1.030 as the Inflation Adjustment Factor through October 1993 in CUID No. NJ0430, 1.032 as the Inflation Adjustment Factor through November 1993 in CUID No. NJ0428, 1.034 as the Inflation Adjustment Factor through December 1993 in CUID No. NJ0557, and 1.037 as the Inflation Adjustment Factor through January 1994, the base date Operator used in justifying its rates, in CUID Nos. NJ0429 and NJ0556.

7. Upon review of the record herein, and having incorporated the adjustments discussed above, we conclude that Operator has failed to justify the rate it was charging during the period in question. Operator's showing justifies the maximum reasonable CPS tier prices shown on Appendix B (plus franchise fee) for the period from the filing of the earliest complaint in each franchise area (as set forth in Appendix A) to May 14, 1994.[24]

8. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that Operator's motion to dismiss the complaint filed February 28, 1994 by the New Jersey Board of Regulatory Commissioners IS DENIED.

9. IT IS FURTHER ORDERED that the complaints referred to in Appendix A against the cable programming service price charged by Operator in the areas referenced in the caption and at Appendix A herein, and all other complaints in these franchise areas related to the same price, ARE GRANTED TO THE EXTENT INDICATED HEREIN.

10. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47 C.F.R. § 76.961, that Operator shall refund to subscribers in the communities shown in Appendix B that portion of the amounts paid for cable programming service for the period from the filing of the first valid complaint in each franchise area (as set forth on Appendix A)[25] to May 14, 1994 which exceeded the maximum price for each franchise area set forth in Appendix B (plus franchise fee) per month, plus interest to the date of the refund.

11. IT IS FURTHER ORDERED that Operator shall promptly determine the overcharges to CPS subscribers for the stated periods, and shall within 30 days of the release of this Order file a report with the Chief, Cable Services Bureau, stating the cumulative refund amount so determined (including franchise fees and interest), describing the calculation thereof, and describing its plan to implement the refund within 60 days of Commission approval of the plan.

12. IT IS FURTHER ORDERED, pursuant to Section 76.922(b)(4)(C) of the Commission's rules, 47 C.F.R. § 76.922(b)(4)(C), that Operator shall, within 30 days of the release of this Order, revise its Form 1200 filings with respect to the communities listed herein, for the period beginning May 15, 1994, to reduce the monthly charge per

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[21] *See* Questions and Answers on Completion of FCC Form 393 and Associated Filing Requirements, Question and Answer No. 7 (released Nov. 10, 1993) ("Where operators have restructured equipment rates as of September 1, 1993 in accordance with our regulations . . . operators will enter on Line 104 the same, or nearly the same, number as on Line 301.").

[22] *See* 47 C.F.R. § 76.922(b)(9)(iii) (if a cable operator fails to justify its rates, rates must be adjusted in accordance with the most accurate data available at the time of analysis).

[23] *See* FCC Form 393, page 11, instructions for line 124 (Inflation Adjustment Factor is calculated using "the number of whole months from September 30, 1992 to the date you will submit this form"); 47 C.F.R. § 76.956(a) (operator must file a response within 30 days of the date of service of a complaint).

[24] This finding is based solely on the representations of Operator and the modifications described herein. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

[25] Our jurisdiction to order a refund dates from the earliest date a valid complaint is filed with the Commission. 47 C.F.R. § 76.961(b).

tier as of March 31, 1994 for Tier 2 (Line A6b) to equal the maximum price in each franchise area set forth in Appendix B (plus franchise fee).[26]

13. IT IS FURTHER ORDERED that Operator shall place into effect, within 30 days after its submission of the revised Form 1200 filings required above, prices that reflect the reductions in the CPS rates determined in this Order.

14. IT IS FURTHER ORDERED, pursuant to Section 76.960 of the Commission's rules, 47 C.F.R. § 76.960, that Operator shall not be required to obtain advance approval of adjustments to its CPS prices in the franchise areas addressed herein for one year following the release of this Order, due to Operator's having submitted in good faith an optional supplemental filing in response to our *Public Notice*.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

Appendix A

CUID No.	Date First Complaint Filed with FCC	Date Complaint Served
NJ0428	11/08/93	11/01/93
NJ0429	02/28/94	02/25/94
NJ0430	10/15/93	10/13/93
NJ0556	02/28/94	02/25/94
NJ0557	01/05/94	12/28/93

Appendix B

CUID No.	Actual Rate	Maximum Permitted Rate
NJ0428	$14.11	$13.43
NJ0429	$14.11	$13.49
NJ0430	$14.11	$13.40
NJ0556	$14.11	$13.49
NJ0557	$14.11	$13.46

[26] We reserve the right to make further adjustments to Operator's prices for the period after May 14, 1994, upon completion of our review of Operator's Form 1200 filings.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Atlanta Cable Partners — CUID No. GA0018
City of Atlanta, Georgia

Benchmark Filing to Justify Cable Programming Service Rate

MEMORANDUM OPINION AND ORDER

Adopted: March 20, 1995; Released: March 22, 1995

By the Deputy Chief, Cable Services Bureau:

1. Here we consider complaints about the price Atlanta Cable Partners, acquired by Southern Multimedia Communications, Inc. in December, 1994 ("Operator"), was charging for its cable programming service ("CPS") tier in the community referenced above. Operator has chosen to attempt to justify its price through a benchmark showing on FCC Form 393. This Order addresses the reasonableness of Operator's price only through May 14, 1994. At a later time we will issue a separate order addressing the reasonableness of the price after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a complete and timely complaint. The filing of a complete and timely complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with complete and timely CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

4. Operator asserts that its monthly CPS price is justified by its benchmark filing because this price is less than the maximum permitted charge. Upon review, we have found no apparent errors that would result in Operator's actual CPS price exceeding its maximum permitted CPS price.[11]

5. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of theCommission's Rules, 47 C.F.R. § 0.321, that the complaints referenced herein against the cable programming service price charged by Operator in the community referenced above ARE DENIED TO THE EXTENT INDICATED HEREIN.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Deputy Chief, Cable Service Bureau

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[1] The findings in this Order do not in any way prejudge the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations. However, to the extent the operator has sought to take advantage of the refund deferral period under the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 ("*Second Order on Reconsideration*"), the maximum permitted CPS price determined herein might also apply from May 15, 1994 until the date on which the operator implemented its CPS price under the new regulations. *See* para. 3, *infra*.

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992) ("1992 Cable Act"); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] Order in MM Docket No. 92-266, Implementation of Sections of the Cable Consumer Protection and Competition Act of 1992: Rate Regulation, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration*, 9 FCC Rcd at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

[11] This finding is based solely on the representations of the operator. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Sammons Communications, Inc. CUID No. NJ0006
Atlantic City, New Jersey

Benchmark Filing To Support
Cable Programming Service Price

MEMORANDUM OPINION AND ORDER

Adopted: March 20, 1995; Released: March 22, 1995

By the Chief, Cable Services Bureau:

INTRODUCTION

1. Here we consider a complaint about the price Sammons Communications, Inc. ("Sammons") was charging for its cable programming service ("CPS") tier in Atlantic City, New Jersey, CUID No. NJ0006. Sammons has chosen to attempt to justify its price through a benchmark showing on FCC Form 393. This Order addresses the reasonableness of Sammons' price only through May 14, 1994. At a later time we will issue a separate order addressing the reasonableness of the price after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a valid complaint. The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with valid CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

PROCEDURAL MATTERS

4. The complaint was served on Sammons on October 3, 1993. The Commission received the complaint on October 7, 1993.[11]

5. Sammons attempted to justify its CPS price through an FCC Form 393 filed on November 24, 1993 in response to the complaint. Sammons first amended its justification on April 4, 1994 and, in response to a Commission inquiry, again on March 1, 1995.

DISCUSSION

6. In its amended benchmark filing of March 1, 1995, Sammons calculated a maximum permitted rate for the CPS tier of $9.57 per month (plus franchise fee). Upon review of this filing, we have found no apparent errors that would require a recalculation of this maximum permitted rate. However, Sammons' actual monthly charge for its CPS tier was $11.13 (plus franchise fee). Thus, Sammons has failed to demonstrate that the actual charge for its CPS tier was at or below the maximum permitted rate.

CONCLUSION

7. Upon review of the record herein, we conclude that Sammons' showing supports a maximum reasonable CPS tier price of $9.57 per month (plus franchise fee) for the

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[1] The findings in this Order do not in any way prejudge the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations. However, to the extent Sammons has sought to take advantage of the refund deferral period under the *Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking*, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (1994) ("*Second Order on Reconsideration*"), the maximum permitted CPS price determined herein might also apply from May 15, 1994 until the date on which Sammons implemented its CPS price under the new regulations. *See* para. 3, *infra*. Furthermore, to the extent that the price for the period ending May 14, 1994 is found to be excessive, reductions in Sammons' price for the period after May 14, 1994 may be required to reflect the fact that Sammons' price during the earlier period, which is used as the starting point to calculate its price for the prospective period, was unreasonable. *See* 47 C.F.R. § 76.922(b)(4)(C).

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] *Order* in MM Docket No. 92-266, *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration*, 9 FCC Rcd at 4190, paras. 150-152.

[9] *Id.*.

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

[11] The complaint was signed October 2, 1993 and states that it was mailed to Sammons on October 3, 1993. Sammons has not complied with 47 C.F.R. § 76.956(a), which requires it to state when service occurred. Under these circumstances, we will consider October 3, 1993 as the service date.

period October 7, 1993 to May 14, 1994.[12] We further determine that we will order an appropriate refund pursuant to Section 76.957 of the Commission's Rules, 47 C.F.R. § 76.957, in order to reimburse subscribers for the amount they paid in excess of a reasonable price.

8. We further conclude that Sammons must reflect in its Form 1200 rate filing for the period after May 14, 1994 the fact that Sammons' price during the earlier period was unreasonable.[13] We reserve the right to make further adjustments to Sammons' price for the period after May 14, 1994, upon completion of our review of Sammons' FCC Form 1200 rate filing.

9. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the October 2, 1993 complaint against the cable programming service price charged by Sammons Communications, Inc. in Atlantic City, New Jersey, CUID No. NJ0006, IS GRANTED TO THE EXTENT INDICATED HEREIN.

10. IT IS FURTHER ORDERED that the benchmark filing submitted by Sammons Communications, Inc. with respect to Atlantic City, New Jersey, CUID No. NJ0006, for the period of October 7, 1993 to May 14, 1994, justifies a maximum price of $9.57 per month (plus franchise fee) for Sammons Communications, Inc.'s cable programming service tier.

11. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's Rules, 47 C.F.R. § 76.961, that Sammons Communications, Inc. shall refund to subscribers that portion of the amounts paid for cable programming service from October 7, 1993[14] to May 14, 1994, that exceeded $9.57 per month (plus franchise fee) and was thus unreasonable, plus interest to the date of the refund.

12. IT IS FURTHER ORDERED that Sammons Communications, Inc. shall promptly determine the overcharges to CPS subscribers for the stated period, and shall within 30 days of the release of this Order file a report with the Chief, Cable Services Bureau, stating the cumulative refund amount so determined (including franchise fees and interest), describing the calculation thereof, and describing its plan to implement the refund within 60 days of Commission approval thereof.

13. IT IS FURTHER ORDERED, pursuant to Section 76.922(b)(4)(C) of the Commission's Rules, 47 C.F.R. § 76.922(b)(4)(C), that Sammons Communications, Inc. shall, within 30 days of the release of this Order, revise its Form 1200 filing with respect to its Atlantic City, New Jersey franchise area, CUID No. NJ0006, for the period beginning May 15, 1994, to reduce the monthly charge per tier as of March 31, 1994 for Tier 2 (Line A6b) to equal the maximum price for that franchise area (plus franchise fee).

14. IT IS FURTHER ORDERED that Sammons Communications, Inc. shall place into effect, within 30 days after its submission of the revised Form 1200 filing required above, a CPS tier price for its Atlantic City, New Jersey franchise area, CUID No. NJ0006, that reflects the reduction in the CPS rate determined in this Order.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

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[12] This finding is based solely on the representations of Sammons listed in paragraph 5, *supra*. Should information come to our attention that these representations were inaccurate in any material way, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to hhthis proceeding not specifically addressed herein.

[13] We reviewed Sammons' Form 1200 rate filing and confirmed that Sammons calculated its rates for the period after May 14, 1994 using the rate that we find in this Order to be unreasonable.

[14] Our jurisdiction to order a refund dates from the earliest date a valid complaint is filed with the Commission. 47 C.F.R. § 76.961(b).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Shen-Heights TV Associates PA0488 Shenandoah, PA

Paragon Cable CA0941 Torrance, CA

Withdrawal of Rate Complaints
Concerning Cable Services Rates

ORDER

Adopted: March 20, 1995; Released: March 22, 1995

By the Deputy Chief, Cable Services Bureau:

1. In each of the cases noted above, the local franchising authority (LFA) or another complainant filed a complaint with this Commission alleging that the prices charged for cable programming service tier (CPS) services in its community were unreasonably high. These complaints, and the cable operators and filing dates, are noted at Attachment A. Later, these complainants wrote to the Commission to withdraw their CPS complaints.[1] In the case of Shen-Heights TV Associates, there was only one complainant who filed with this Commission to complain about CPS rates. In the case of Paragon Cable in Torrance, other valid complaints remain. Our jurisdiction to regulate CPS rates arises with the filing of a valid complaint against those rates. We will allow the withdrawal of these complaints, and our review of the Shen-Heights filing will therefore be terminated.

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a valid complaint. The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.

3. The Commission's original rate regulations took effect on September 1, 1993.[5] The Commission subsequently revised its rate regulations effective May 15, 1994.[6] Operators with valid CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[7] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[8] In each case captioned above, the operator did file either an FCC Form 393 benchmark rate justification submission, or a cost of service rate justification submission.

4. This Commission has now received from one complainant in each of the captioned communities a letter stating that it wishes to withdraw its CPS rate complaint against the operator. Under our rules, this Commission's authority to regulate CPS cable rates arises when a valid complaint against those rates is filed. In the Shen-Heights case, the complainant is the only complainant against this operator in this community. Our mandate is to "protect subscribers of any cable system that is not subject to effective competition from rates that exceed the rates that would be charged if such a system were subject to effective competition."[9] While our rules forbid collusive agreements between operators and local franchising authorities regarding forebearance from rate regulation, there is no evidence of such an agreement here. We will accordingly allow these complainants to withdraw their complaints. Because our review of the rate justification showings is predicated on the existence of a rate complaint, and Shen-Heights TV Associates no longer faces a rate complaint, we are terminating our review of that filing. Paragon Cable in Torrance, on the other hand, faces additional valid complaints, so this action does not terminate our review there.

5. Accordingly, IT IS ORDERED that permission to withdraw the FCC Form 329 rate complaints against cable programming service rates in the above-noted communities IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Deputy Chief, Cable Services Bureau

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[1] The dates of all withdrawal letters are noted in Attachment A.

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993) (Cable Act of 1992).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] Order in MM Docket No. 92-266, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[6] *See* Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket No. 92-266, Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, 9 FCC Rcd 4119 (1994) (*Benchmark Order*); 47 C.F.R. § 76.922(b).

[7] *See Benchmark Order*, 9 FCC Rcd at 4190, paras. 150-152.

[8] *Id.*

[9] Conference Report on the Cable Act of 1992, at 62. *See also*, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket No. 92-266, Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631 (1993) (*Rate Order*) at 5669.

Attachment A

CPS Complaint Withdrawals

CUID No., Community	Operator	Complaint Filed[10]	Complaint Withdrawn
CA0941 City of Torrance	Paragon Cable	2/28/94	2/24/95
PA0488 Shenandoah	Shen-Heights TV Assoc.	1/12/94	2/27/95

[10] The date given is the date the complainant first filed a complaint. In some cases, the complainants filed duplicate complaints at later dates.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 94-88

In re Application of

COMMUNITY EDUCATIONAL ASSOCIATION
Holly Hill, Florida

File No. BPED-930316MF

For Construction Permit for a New Noncommercial Educational FM Station on Channel 212A

MEMORANDUM OPINION AND ORDER

Adopted: May 4, 1995; Released: May 23, 1995

By the Review Board: MARINO (Chairman) and GREENE.

1. On April 19, 1995, Central Florida Educational Foundation, Inc. (Central Florida) filed with the Review Board a Petition to Intervene/Petition for Remand, which it supplemented on April 24, 1995. Subsequently, on April 27, 1995, Central Florida filed a letter withdrawing its petition, noting that the objections raised have essentially been cured by an amendment previously filed with the Administrative Law Judge. Central Florida's request for dismissal will be granted.

2. ACCORDINGLY, IT IS ORDERED, That Central Florida Educational Foundation, Inc.'s request to withdraw petition, filed April 27, 1995, IS GRANTED; and that its Petition to Intervene/Petition for Remand, filed April 19, 1995 and supplemented on April 24, 1995, IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Joseph A. Marino
Chairman, Review Board

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 94-51

In the Matter of

Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Mamou and Jonesville, Louisiana)	RM-8466

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: May 11, 1995; Released: May 23, 1995

By the Chief, Policy and Rules Division:

1. Before the Commission is a petition for reconsideration[1] of the *Report and Order* in this proceeding, 9 FCC Rcd 5728 (1994), filed by Simla B. Ellis d/b/a SoTo Broadcasting ("Ellis"), permittee of Station KAHK(FM), Channel 266A, Mamou, Louisiana, denying Ellis' request to substitute Channel 266C3 for Channel 266A at Mamou and modifying her authorization to reflect an upgrade of Station KAHK(FM)'s facilities. The denial was based on Ellis' failure to file comments restating her intention to apply for Channel 266C3, if allotted.

2. The Commission issued the *Notice of Proposed Rule Making*, 9 FCC Rcd 2764 (1994), seeking comments on the proposal to substitute Channel 266C3 for Channel 266A at Mamou and modifying Ellis' authorization to reflect an upgrade of Station KAHK(FM)'s facilities at Mamou. In order to accommodate the upgrade at Mamou, Ellis also requested the substitution of Channel 286A for vacant Channel 266A at Jonesville, Louisiana. However, Ellis neglected to file comments reconfirming her interest, as required by Commission policy. Thus, consistent with our policy and procedures as set forth in the Appendix to the *Notice*, we refrained from adopting Ellis' proposal. In her petition for reconsideration, Ellis now provides the requisite intention to apply for Channel 266C3 at Mamou.

3. Accordingly, we believe that the public interest considerations merit a reversal of our earlier dismissal. The station's upgrade at Mamou would have probably been granted earlier had it not been for the absence of an expression of interest.

4. Channel 266C3 can be allotted to Mamou in compliance with the Commission's minimum distance separation requirements, provided that Channel 286A is substituted for vacant Channel 266A at Jonesville, Louisiana.[2] Channel 266C3 can be allotted to Mamou with a site restriction of 12.2 kilometers (7.6 miles) east in order to accommodate Ellis's desired site.[3] As requested, we will also modify Station KAHK(FM)'s construction permit to specify operation on Channel 266C3 in accordance with Section 1.420(g) of the Commission's Rules.

5. In view of the above considerations, IT IS ORDERED, That the petition for reconsideration filed by Simla B. Ellis d/b/a SoTo Broadcasting IS GRANTED.

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS FURTHER ORDERED, That effective **July 7, 1995**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Mamou, Louisiana	266C3
Jonesville, Louisiana	286A

7. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the construction permit of Simla B. Ellis for Station KAHK(FM), Mamou, Louisiana, IS MODIFIED to specify operation on Channel 266C3, in lieu of Channel 266A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

8. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and /or upgrade. As a result of this proceeding, Simla B. Ellis d/b/a/ SoTo Broadcasting, permittee of Station KAHK(FM), is required to submit a rule making fee in addition to the fee required for the applications to effect the change in community of license and/or upgrade.

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202) 418-2180.

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[1] Public Notice of the petition for reconsideration was given November 2, 1994, Report No. 2039.

[2] The coordinates for Channel 286A at Jonesville are North Latitude 31-35-38 and West Longitude 91-45-23.

[3] The coordinates for Channel 266C3 at Mamou are North Latitude 30-39-42 and West Longitude 92-17-52.

FEDERAL COMMUNICATIONS COMMISSION

Douglas W. Webbink
Chief, Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
May 15, 1995

Released: May 23, 1995

IN REPLY REFER TO:
8210-SP/CW
94120123

Mr. K. L. Chapin
3016 Delta River
Lansing, MI 48906

Dear Mr. Chapin:

This is in reply to your letter regarding a commercial announcement broadcast by Station WLNS-TV on behalf of Sundance Jewelry. The announcement encouraged people to buy jewelry from Sundance Jewelry, offering full refunds for every purchase made during a specific time period (apparently from November 20 to December 24, 1994) in the event it snowed three inches or more on New Year's Eve 1994. You seek information as to whether the anti-lottery law, 18 U.S.C. § 1304, and Section 73.1211 of the Commission's Rules regarding the broadcast of lottery information, would prohibit the broadcast of this promotional announcement.

Based on the information you have provided, we believe that the promotion conducted by Sundance Jewelry is not a lottery but a "premium" or "bonus giveaway," similar to others we have informally approved. In a lottery, chance usually comes into play either in selecting winners or in determining the value of the prize. In this promotion, we have neither. There is, in fact, no selection of winners at all. Rather, everyone who participates in the promotion either wins or does not win the premium. In addition, the amount of the premium is not a matter of chance. In this case it is predetermined by each purchaser. Thus, the promotion you describe simply broadcasts information regarding a "bonus" available to all persons who buy jewelry during a certain period of time.

I hope that the foregoing is informative and responsive to your inquiry. If you need any further assistance, please feel free to call us at (202) 418-1430.

Sincerely,

Norman Goldstein, Chief
Complaints and Investigations Branch
Enforcement Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

COMSAT CORPORATION File No. CSS-94-004-LA

Application for authority to participate
in the launch of the INTELSAT VII-A (706)

ORDER AND AUTHORIZATION

Adopted: May 17, 1995; Released: May 23, 1995

By the Chief, Satellite and Radiocommunication Division:

1. The Commission has under consideration the above-captioned application filed by the COMSAT Corporation on December 9, 1993, for authority to participate in the launch, positioning and in-orbit testing of the INTELSAT VII-A (706) satellite. The application appeared on the Commission's Public Notice on December 15, 1993. No comments were received.

2. Authority to construct and operate the INTELSAT 706 satellite was granted in an order (FCC File No. CSS-90-001) released June 3, 1992.[1] The satellite has been constructed and delivered. Current INTELSAT deployment plans call for the launch to take place on May 17, 1995, utilizing an Ariane 44LP launch vehicle. This satellite will replace the INTELSAT VA (513) at 307^0 East Longitude in the Atlantic Ocean Region (AOR).

3. The estimated costs associated with the INTELSAT 706 satellite are as follows (all amounts in real year dollars):

Space Systems/Loral Contract Price	$133.0 million
Spacecraft Parallel Integration	$ 5.7 million
Space Systems/Loral Launch Support	$ 3.7 million
Performance Incentives, Capitalized	$ 3.8 million
Performance Incentives, Expensed	$ 33.8 million
Support Contracts	$ 1.9 million
Ariane 44LP Launch Vehicle & Services	$144.2 million
TOTAL INTELSAT cost	$326.1 million
TOTAL COMSAT cost (based on current ownership share of 19.12%)	$ 62.35 million

4. The Commission has already determined that Comsat's participation in the procurement of the INTELSAT VII-A satellites is required to meet traffic requirements. We therefore find that the public interest will be served by a grant of Comsat's application for the launch of the INTELSAT 706 satellite as conditioned.

5. Accordingly, IT IS ORDERED that Comsat's application to participate in the launch and test program of the INTELSAT 706 satellite to be positioned at 307^0 East Longitude, IS GRANTED subject to the following terms and conditions:

(a) This authorization is limited to the described program. Any change in the authorized location due to a launch delay or other circumstances will be considered upon a proper request by Comsat for authority;

(b) Comsat shall furnish via the INTELSAT 706 satellite only those channels of communication for commercial service which have been, or may be, authorized by the Commission under Section 214 of the Communications Act of 1934, as amended;

(c) Within 30 days after completion of the testing program, Comsat shall provide the Commission with a summary report of its results and, upon request, shall make the detailed test data available;

(d) Conduct of the program authorized herein shall be without interruption of commercial satellite service now authorized at U.S. earth stations;

(e) Neither this authorization nor any right granted herein shall be assigned or otherwise transferred without approval of the Commission; and

(f) Unless extended or modified for good cause, this authorization shall terminate six months after the release date of this order.

6. This order is issued under Section 0.261 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*See* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Thomas S. Tycz
Chief, Satellite and
Radiocommunication Division
International Bureau

[1] Communications Satellite Corporation, 7 FCC Rcd 3430 (1992).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MELBOURNE INTERNATIONAL COMMUNICATIONS, LIMITED

Application for authority to acquire and operate facilities for service to various overseas points. File No. I-T-C-95-216

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: May 12, 1995; Released: May 24, 1995

By the Chief, Telecommunications Division:

1. Upon consideration of the above-captioned uncontested application, filed pursuant to Section 214 of the Communications Act of 1934, as amended, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require a grant thereof.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-95-216 IS GRANTED, and Melbourne International Communications, Limited (MICL) is authorized to:

a. lease from Comsat and operate up to 30 64-kbps voice-grade circuits to each country listed in the Appendix, between appropriately licensed U.S. earth stations and appropriate INTELSAT Atlantic and Pacific Ocean Region satellites, connecting with similar circuits between the satellites and earth stations in the countries listed in the Appendix, furnished by its correspondents;

b. lease and operate facilities in the appropriately licensed U.S. earth stations, to be used in conjunction with the space segment capacity;

c. lease and operate any necessary domestic connecting facilities;

d. lease a one-half interest in and operate any necessary overseas connecting facilities; and

e. use said facilities to provide regularly authorized services, including switched voice and data and private line services, between the United States and the countries listed in the Appendix.

3. IT IS FURTHER ORDERED that our authorization of MICL to provide private lines as part of its authorized services is limited to the provision of such private lines only between the United States and one of the countries listed in the Appendix – that is, private lines which originate in the United States and terminate in one of the countries listed in the Appendix or which originate in one of the countries listed in the Appendix and terminate in the United States. In addition, MICL may not – and MICL's tariff must state that its customers may not – connect private lines provided over these facilities to the public switched network at either the U.S. or foreign end, or both, for the provision of international basic switched services, unless authorized to do so by the Commission upon a finding that the destination country affords resale opportunities equivalent to those available under U.S. law, in accordance with *Regulation of International Accounting Rates, Phase II, First Report and Order*, 7 FCC Rcd 559 (1991), Order on Reconsideration and Third Further Notice of Proposed Rulemaking, 7 FCC Rcd 7927 (1992), *petition for reconsideration pending.*

4. IT IS FURTHER ORDERED that neither MICL nor any persons or companies directly or indirectly controlling or controlled by MICL, or under direct or indirect common control with it, shall acquire or enjoy any right, for the purposes of handling or interchanging traffic to or from the United States, its territories or possessions, which is denied to any other United States carrier by reason of any concession, contract, understanding, or working arrangement to which MICL or any persons or companies controlling or controlled by MICL are parties.

5. IT IS FURTHER ORDERED that the applicant shall file copies of any operating agreement it enters into with its foreign correspondent with the Commission within 30 days of its execution, and shall otherwise comply with the filing requirements contained in Section 43.51 of the Commission's Rules, 47 C.F.R. §43.51.

6. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. §203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

7. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

8. IT IS FURTHER ORDERED that the applicant shall file semi-annual circuit reports pursuant to Section 63.15(b) of the Commission's Rules, 47 C.F.R. §63.15(b), for the common carrier facilities authorized herein.

9. The Commission retains jurisdiction over this matter to reallocate circuits in the satellite system among the various international common carriers and other authorized users as required to ensure nondiscriminatory use of, and equitable access to, the communications satellite system.

10. This order is issued under Section 0.261 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Diane J. Cornell, Chief
Telecommunications Division
International Bureau

APPENDIX

Atlantic Ocean

Afghanistan
Algeria
Angola
Armenia
Austria
Azerbaijan
Bahamas
Bahrain
Bangladesh
Barbados
Belgium
Benin
Bhutan
Bosnia-Herzegovenia
Burkina Faso
Cameroon
Canada
Cape Verde Is.
Central African Rep.
Chad
Congo
Cote d'Ivoire
Croatia
Cyprus
Czech Republic
Denmark
Dominican Republic
Ecuador
Egypt
Ethiopia
Finland
France
Gabon
Germany
Ghana
Greece
Guinea
Haiti
Honduras
Hungary
Iceland
Iran
Iraq
Ireland
Israel
Italy
Jamaica
Jordan
Kenya
Kuwait
Lebanon
Libya
Liechtenstein
Luxembourg
Macedonia, FYRO
Madagascar
Malawi
Mali
Malta
Mauritania
Mauritius
Monaco
Morocco
Mozambique
Namibia
Nepal
Netherlands
Niger
Nigeria
Norway
Oman
Pakistan
Paraguay
Poland
Portugal
Qatar
Romania
Russian Fed.
Rwanda
Saudi Arabia
Senegal
Serbia & Montenegro
Slovenia
Somalia
South Africa
Spain
Sri Lanka
Sudan
Swaziland
Sweden
Switzerland
Syria
Tanzania
Togo
Trinidad & Tobago
Tunisia
Turkey
Uganda
United Arab Emirates
United Kingdom
Uruguay
Vatican City
Yeman Arab Rep.
Zaire
Zambia
Zimbabwe

Pacific Ocean

Australia
China, Peoples Rep.
Fiji Islands
India
Indonesia
Japan
Korea, Rep. of
Malaysia
Micronesia
New Zealand
Papua New Guinea
Philippines
Singapore
Thailand
Vietnam

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

William H. Battles — File No. 706526
d/b/a Customtronics Sound
Diamond Springs, California

for a waiver of the Rules to allow
use of 100 kHz of Multiple Address
System spectrum at one station

ORDER

Adopted: May 15, 1995; Released: May 24, 1995

By the Associate Bureau Chief, Office of Operations Wireless Telecommunications Bureau

1. William H. Battles, d/b/a Customtronics Sound (Customtronics), seeks a waiver of Section 94.15 of the Commission's Rules, 47 C.F.R. § 94.15, to permit the use of more than 50 kHz of bandwidth by a Multiple Address System (MAS) in the Private Operational-Fixed Microwave Service (OFS). Section 94.15(g) provides that MAS stations are normally limited to 50 kHz of spectrum: four 12.5 kHz transmit channels which may be stacked.[1] Customtronics requests a waiver of this provision and an authorization to use two additional 25 kHz channels. For the reasons that follow, Customtronics' request is denied.

2. Customtronics has filed the captioned application in the OFS, requesting authority to add two 25 kHz MAS channels to its existing station WNTV665 (presently authorized to transmit on two 25 kHz channels) in order to expand music programming to include different formats of music. In support of its request, Customtronics states that the existing channels are used to provide background and foreground music to its subscribers, but that the additional channels will be used to expand service to include light country, jazz, current hits, and ethnic programming to meet the requests of its subscribers. It states that the existing channels cannot be reassigned or time divided to provide the proposed new music formats, and that each frequency will deliver a completely different program to its subscribers. According to Customtronics, its subscribers include commercial enterprises such as banks, stores, supermarkets, restaurants and auto dealerships. Customtronics provides engineering information to justify the use of a 25 kHz bandwidth for each of the channels requested.[2] Finally, Customtronics certifies, based upon frequency engineering analysis, that its proposed system will not cause harmful interference to any existing or other applied-for systems.

3. In this case, Customtronics has not demonstrated a unique or unusual circumstance which would justify a waiver of Rule Section 94.15(g). MAS systems are intended primarily for use in passing digital traffic between a master and its remotes.[3] Customtronics' use, the delivery of music programming to its customers using analog equipment, is a spectrum intensive use by nature. Customtronics presently uses two 25 kHz channels, to fill the maximum 50 kHz of spectrum permitted by Rule Section 94.15(g). Customtronics justifies its proposed use of 50 kHz of additional spectrum solely on its desire to offer, for profit, a greater variety of music formats to its customers.

4. The acceptance of a desire to provide additional music programming formats as sufficient justification for obtaining bandwidth in excess of that permitted by the Rule could easily result in a deluge of similar filings. It would set a precedent dangerous to the continued availability of MAS spectrum to its intended digital user community.

5. Customtronics has not shown a unique or unusual need in this case. A grant of the proposed system would undermine the intention of the bandwidth restriction in the Rule, which is to limit the use of MAS bandwidth by individual stations in order to make it available for the widest possible use.[4] We find the operation proposed not to be in the public interest. *Thomas Radio v. FCC*, 716 F.2d 921 (D.C. Cir. 1983); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

6. Pursuant to Section 0.331, 47 C.F.R. § 0.331, and Section 1.3, 47 C.F.R. § 1.3, the request of William H. Battles, d/b/a Customtronics Sound, for waiver of Section 94.15 for the referenced application, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gary L. Stanford, Associate Bureau Chief
Office of Operations
Wireless Telecommunications Bureau

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[1] Rule section 94.15(g) states in pertinent part:

> [M]aster and remote stations using frequencies listed in § 94.65(a)(1) of this part will not normally be authorized more than four (12.5 kHz) frequencies or frequency pairs.

[2] In order to provide high quality music programming, Customtronics' analog system requires more bandwidth than the standard 12.5 kHz channel provided to most digital users. *Cf.*, 47 C.F.R. § 2.202.

[3] The Commission tailored the channelization of the MAS spectrum to efficiently satisfy the usage needs of the digital user community. *In re Amendment of §§ 22.501(g)(2) and 94.65(a)(1) of the Rules and Regulations to Re-Channel the 900 MHz Multiple Address Frequencies*, 3 FCC Rcd 1564 (1988).

[4] *Compare*, In re Northern States Power Co. et al., 8 FCC Rcd 4094 (1993)(waiver of §§ 94.15 and 94.65 channelization scheme granted after finding that the use proposed by digital user did not undermine the purpose of the rules waived "which is to permit the efficient use of the MAS spectrum"); In re Wyoco, Inc., 6 FCC Rcd 1912 (1991) (waiver of § 94.65 denied where proposed use was spectrally inefficient).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 94-152

In the Matter of

Amendment of Section 73.202(b), RM-8565
Table of Allotments,
FM Broadcast Stations.
(Bells, Texas)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 17, 1995; Released: May 24, 1995

By the Chief, Allocations Branch:

1. At the request of Thomas S. Desmond ("petitioner"), the Commission has before it the *Notice of Proposed Rule Making*, 9 FCC Rcd 7943 (1994), proposing the allotment of Channel 225A to Bells, Texas, as the community's first local FM service. Petitioner filed comments reiterating his intention to apply for the channel, if allotted.[1] No other comments were received.

2. We believe the public interest would be served by allotting Channel 225A to Bells, Texas, since an interest has been expressed in providing the community with its first local FM service. Channel 225A can be allotted to Bells in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.[2]

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **July 10, 1995**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Bells, Texas	225A

4. The window period for filing applications will open on **July 10, 1995**, and close on **August 10, 1995**.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] As requested in the *Notice*, petitioner also provided a statement verifying that the statements contained in his petition are true to the best of his knowledge.

[2] The coordinates for Channel 225A at Bells are 33-36-37 North Latitude and 96-24-38 West Longitude.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment to the Fee
Schedule for the Processing
of Requests for Agency Records
Pursuant to the Freedom
of Information Act

MEMORANDUM OPINION AND ORDER

Adopted: May 12, 1995; Released: May 25, 1995

By the Managing Director:

1. The Freedom of Information Act (FOIA) requires federal agencies to establish a schedule of fees for the processing of requests for agency records in accordance with fee guidance issued by the Office of Management and Budget (OMB).[1] In 1987, OMB issued its Uniform Freedom of Information Act Fee Schedule and Guidelines.[2] However, because the FOIA requires that each agency's fees be based upon the direct cost incurred by the agency in providing FOIA services,[3] OMB did not provide a unitary, government-wide schedule of fees.

2. The Commission based its FOIA fee schedule on the grade level of the employee who processes the request. Thus, the fee schedule was computed at a Step 5 of each grade level, based on the General Schedule effective January 1987 (including 16 percent for personnel benefits).

3. By this order, the Commission is revising the rules that set forth the fees[4] for the recovery of the full, allowable direct costs of searching for and reviewing agency records requested pursuant to the FOIA and the Commission's rules, 47 C.F.R. Sections 0.460, 0.461. The revisions correspond to modifications in the rate of pay recently approved by Congress.

4. Because this is a modification of rules relating to agency procedure and practice, compliance with the notice and comment and effective date provisions is not required. *See* 5 U.S.C. Sections 553(b)(A); 553(d).

5. Accordingly, pursuant to the authority contained in Section 0.231(d) of the Commission's rules, IT IS HEREBY ORDERED, that, effective immediately, Section 0.467 of the Commission's Rules, 47 C.F.R. Section 0.467 is amended, as described herein.

FEDERAL COMMUNICATIONS COMMISSION

Andrew S. Fishel
Managing Director

AMENDATORY TEXT

Part 0 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended to read as follows:

Part 0 - COMMISSION ORGANIZATION

1. The authority citation for Part 0 will read as follows:

AUTHORITY: 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 0.467 is amended by revising paragraph (a) to read as follows:

* * * * *

Section 0.467 Search and review fees.

(a) * * * The fee is based on the grade level of the employee(s) who conduct(s) the search or review, as specified in the following schedule:

Grade	Hourly fee
GS-1	8.27
GS-2	9.01
GS-3	10.15
GS-4	11.40
GS-5	12.76
GS-6	14.21
GS-7	15.79
GS-8	17.49
GS-9	19.33
GS-10	21.28
GS-11	23.37
GS-12	28.01
GS-13	33.32
GS-14	39.36
GS-15	46.31

Note: These fees will be modified periodically to correspond with modifications in the rate of pay approved by Congress.

(2) The fees in paragraph (a)(1) of this section were computed at Step 5 of each grade level based on the General Schedule effective January 1995 and include 19 percent for personnel benefits.

* * * * *

[1] 5 U.S.C. 552(a)(4)(A)(i).
[2] 52 FR 10012.
[3] 5 U.S.C. 552(a)(4)(A)(iv).
[4] These fees may be restricted or waived in accordance with 5 U.S.C. Section 552(a)(4)(A)(i) and 47 C.F.R. Section 0.470.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

THE WESTERN UNION
TELEGRAPH COMPANY,
Complainant,

v. File No. E-87-144

CONSORTIUM COMMUNICATIONS
INTERNATIONAL, INC.,
Defendant.

ORDER

Adopted: May 22, 1995; Released: May 25, 1995

By the Chief, Formal Complaints and Investigations Branch, Enforcement Division, Common Carrier Bureau:

1. This proceeding was initiated as the result of a Commission order that directed The Western Union Telegraph Company, now known as New Valley Corporation ("Western Union" or "New Valley"), to file a formal complaint with the Bureau's Enforcement Division. Such complaint was intended to provide, *inter alia*, a procedural forum for determining the extent to which certain interconnected carriers ("ICs") would be required to reimburse Western Union for discounts taken by the ICs on interconnected telex and TWX services.[1] Western Union thereupon filed a formal complaint on July 9, 1987, directed against defendant Consortium Communications International, Inc. ("CCI"), and certain other ICs engaged in providing international record services, in order to recover amounts charged or claimed to be due to it.[2] On September 8, 1987, CCI filed its answer and counterclaim for an offset. Thereafter, at the staff's direction or encouragement, Western Union has been engaged in continuing efforts, including failed conciliation before an independent federal mediator, to reach a settlement with all of the defendants, with regard to the disputed amounts required to be paid with interest to it.[3]

2. On May 17, 1995, New Valley and CCI filed a joint motion requesting dismissal of both the complaint, insofar as it was directed against CCI, and CCI's counterclaim. In support thereof, New Valley and CCI state that they wish to avoid continued litigation and have reached a mutually agreeable settlement. In reaching such settlement, the parties have agreed that neither admits liability to the other, and that their action:

> shall not be construed as an admission regarding the merits of either party's claim, an admission concerning issues raised in another proceedings, or a waiver of any claim or defense in any other proceeding, including without limitation further proceedings related to CC Docket Nos. 78-79 and 82-122 and File Nos. E-87-141 through E-87-143.[4]

3. We commend Western Union and CCI for their efforts in finally resolving this litigation. We find that dismissal of the complaint, insofar as it is directed against CCI, as well as dismissal of CCI's counterclaim, will serve the public interest by eliminating the need for further litigation and the expenditure of further time and resources of the parties and of this Commission in this long-protracted proceeding.

4. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C.§ 154(i), and the authority delegated under Section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, that the Joint Motion to Dismiss, filed by the parties in the above-captioned proceeding, IS GRANTED.

5. IT IS FURTHER ORDERED that the complaint filed by The Western Union Telegraph Company on July 9, 1987, IS DISMISSED WITH PREJUDICE, insofar as it was directed against Consortium Communications International, Inc.

6. IT IS FURTHER ORDERED that the counterclaim of Consortium Communications International, Inc. IS DISMISSED WITH PREJUDICE.

7. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

8. IT IS FURTHER ORDERED that New Valley's claim for reimbursement from CCI in CC Docket Nos. 78-97 and 82-122, shall be deemed WITHDRAWN, effective upon this order becoming final.

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[1] In the Matter of Interconnection Arrangements Between and Among the Domestic and International Record Carriers, 2 FCC Rcd 2999, 3002, 3008 (1987).

[2] The other defendants were RCA Global Communications, Inc., Western Union International, Inc., MCI International, Inc., ITT World Communications, Inc., (ITT WorldCom), TRT Telecommunications, Inc., FTC Communications, Inc., Graphnet, Inc., and International Relay, Inc.

[3] The complaint was dismissed insofar as it was directed against RCA Global Communications, Inc., Western Union International, Inc., MCI International, Inc., and ITT WorldCom following settlements reached by Western Union with those parties. *See* Declaratory Ruling, 2 FCC Rcd 2548 (1987) (dismissing all claims involved between Western Union and ITT WorldCom); Western Union Telegraph Co., 3 FCC Rcd 1042 (Com. Car. Bur.1988) (dismissing all claims involved between Western Union and RCA Global Communications); Western Union Telegraph Co., 5 FCC Rcd 5220 (Com. Car. Bur.1990) (dismissing all claims involved between Western Union and MCI International, Inc. and Western Union International, Inc.). New Valley also advised that it has reached agreement with International Relay, Inc. to resolve the amount of reimbursement due and that it expected that the parties would shortly file a joint motion to dismiss. Letter from Steven A. Augustino to Adrien R. Auger (March 24, 1995).

[4] Joint Motion to Dismiss at 3.

FEDERAL COMMUNICATIONS COMMISSION

Thomas D. Wyatt
Chief, Formal Complaints
and Investigations Branch
Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In re:

Quincy Broadcasting Company CSR-4007-A
Quincy, Illinois

For Modification of Station
WGEM-TV's ADI

MEMORANDUM OPINION AND ORDER

Adopted: May 12, 1995; Released: May 25, 1995

By the Cable Services Bureau:

INTRODUCTION

1. In the captioned proceeding, Quincy Broadcasting Company ("WGEM-TV"), licensee of Station WGEM-TV (NBC, Channel 10), Quincy, Illinois, has requested the Commission to include the communities of Bowling Green, Curryville, Frankford, and Louisiana, Missouri within the Quincy, Illinois--Hannibal, Missouri "area of dominant influence" (ADI) for the purposes of the cable television broadcast signal carriage rules.[1] Multimedia KSDK, Inc. ("KSDK"), licensee of Television Broadcast Station KSDK (NBC, Channel 5), St. Louis, Missouri, and Cencom Cable TV, d/b/a Crown Media ("Crown"), a cable system serving areas of Pike County, Missouri, each filed an opposition to the petition for special relief. Benedek Broadcasting HQA, Inc., licensee of Station KHQA-TV (CBS, Channel 7), Hannibal, Missouri, filed comments in support of the petition. WGEM-TV filed a reply to the oppositions.

BACKGROUND

2. Pursuant to §4 of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act")[2] and implementing rules adopted by the Commission in its *Report and Order in MM Docket 92-259*,[3] a commercial television broadcast station is entitled to assert mandatory carriage rights on cable systems located within the station's market. A station's market for this purpose is its "area of dominant influence," or ADI, as defined by the Arbitron audience research organization.[4] An ADI is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns. Essentially, each county in the United States is allocated to a market based on which home-market stations receive a preponderance of total viewing hours in the county. For purposes of this calculation, both over-the-air and cable television viewing are included.[5]

3. Under the 1992 Cable Act, however, the Commission is also directed to consider changes in ADI areas. Section 614(h) provides that the Commission may:

> with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's television market to better effectuate the purposes of this section.

In considering such requests, the 1992 Cable Act provides that:

> the Commission shall afford particular attention to the value of localism by taking into account such factors as--
>
> (I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community;
>
> (II) whether the television station provides coverage or other local service to such community;
>
> (III) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community; and
>
> (IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.[6]

4. The legislative history of this provision indicates that:

> where the presumption in favor of ADI carriage would result in cable subscribers losing access to local stations because they are outside the ADI in which a local cable system operates, the FCC may

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[1] WGEM-TV also filed a request for refund of the $790.00 filing fee after the Commission acts on the petition arguing, *inter alia*, that the petition is similar to a petition for significantly viewed status which does not generally require a fee. This matter has been referred to the Managing Director's Office for resolution.

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992).

[3] *Report and Order in MM Docket 92-259*, 8 FCC Rcd 2965, 2976-2977 (1993).

[4] Section 614(h)(1)(C) of the 1992 Cable Act specifies that a commercial broadcasting station's market shall be determined in the manner provided in §73.3555(d)(3)(i) of the Commission's Rules, as in effect on May 1, 1991. This section of the rules, now redesignated §73.3555(e)(3)(i), refers to Arbitron's ADI for purposes of the broadcast multiple ownership rules. Section 76.55(e) of the Commission's Rules provides that the ADIs to be used for purposes of the initial implementation of the mandatory carriage rules are those published in Arbitron's 1991-1992 *Television Market Guide*.

[5] Because of the topography involved, certain counties are divided into more than one sampling unit. Also, in certain circumstances, a station may have its home county assigned to an ADI even though it receives less than a preponderance of the audience in that county. For a more complete description of how counties are allocated, *see* Arbitron's *Description of Methodology*.

[6] 47 U.S.C. §534(h)(1)(C)(ii).

make an adjustment to include or exclude particular communities from a television station's market consistent with Congress' objective to ensure that television stations be carried in the areas which they serve and which form their economic market.

* * * * *

[This subsection] establishes certain criteria which the Commission shall consider in acting on requests to modify the geographic area in which stations have signal carriage rights. These factors are not intended to be exclusive, but may be used to demonstrate that a community is part of a particular station's market.[7]

5. The Commission provided the following guidance in the *Report and Order* to aid decision making in these matters:

For example, the historical carriage of the station could be illustrated by the submission of documents listing the cable system's channel line-up (*e.g.*, rate cards) for a period of years. To show that the station provides coverage or other local service to the cable community (factor 2), parties may demonstrate that the station places at least a Grade B coverage contour over the cable community or is located close to the community in terms of mileage. Coverage of news or other programming of interest to the community could be demonstrated by program logs or other descriptions of local program offerings. The final factor concerns viewing patterns in the cable community in cable *and* noncable homes. Audience data clearly provide appropriate evidence about this factor. In this regard, we note that surveys such as those used to demonstrate significantly viewed status could be useful. However, since this factor requires us to evaluate viewing on a community basis for cable and noncable homes, and significantly viewed surveys typically measure viewing only in noncable households, such surveys may need to be supplemented with additional data concerning viewing in cable homes.[8]

6. In adopting rules to implement this provision, the Commission indicated that requested changes should be considered on a community-by-community basis rather than on a county-by-county basis, and that they should be treated as specific to particular stations rather than applicable in common to all stations in the market.[9] The rules further provide, in accordance with the requirements of the 1992 Cable Act, that a station not be deleted from carriage during the pendency of an ADI change request.[10]

7. Adding communities to a station's ADI generally entitles that station to insist on cable carriage in those communities. However, this right is subject to several conditions: 1) a cable system operator is generally required to devote no more than one-third of the system's activated channel capacity to compliance with the mandatory signal carriage obligations; 2) the station is responsible for delivering a good quality signal to the principal headend of the system; 3) indemnification may be required for any increase in copyright liability resulting from carriage; and 4) the system operator is not required to carry the signal of any station whose signal substantially duplicates the signal of any other local signal carried, or the signal of more than one local station affiliated with a particular broadcast network. If, pursuant to these requirements, a system operator elects to carry the signal of only one such duplicating signal, the operator is obliged to carry the station from the ADI whose city of license is closest to the principal headend of the cable system.[11] Accordingly, based on the specific circumstances involved, the addition of communities to a station's ADI may guarantee it cable carriage and specific channel position rights, or may simply provide the system operator with an expanded list of must-carry signals from which to choose (*i.e.*, when the system has used up its channel capacity mandated for broadcast signal carriage, or determined which of duplicating network affiliated stations are entitled to carriage priority).

MARKET FACTS AND ARGUMENTS OF THE PARTIES

8. In its petition, WGEM-TV asks the Commission to add the communities of Bowling Green, Curryville, Frankford, and Louisiana, Missouri, all located in Pike County, to the Quincy, Illinois--Hannibal, Missouri ADI so that WGEM-TV may assert must-carry rights on the following cable systems: Cencom Cable (Crown) - Bowling Green; TCI of Missouri - Louisiana; First Cable of Missouri - Curryville; and Cencom Cable (Crown) - Frankford.[12] Pike County, which is assigned to the St. Louis, Missouri ADI, is adjacent to the Quincy, Illinois--Hannibal, Missouri ADI to the south.

9. In support of its request, WGEM-TV states that it has historically been carried on each of the cable systems in Pike county since the systems began delivering service in these communities. With respect to coverage and local service, WGEM-TV states that it places a Grade A contour over portions of Pike County and its Grade B signal encompasses the entire county. WGEM-TV maintains that it serves the County daily with local news, weather, sports and public service project information. WGEM-TV acknowledges that a number of other stations cover Pike County. As for local viewing patterns, WGEM-TV claims its viewership in Pike County justifies modification of the ADI. In support, WGEM-TV provides Nielsen viewership data from 1992 showing that the station's all day share for cable and noncable homes is 14 percent and its net weekly circulation is 77 percent. Finally, WGEM-TV adds that a significant number of its advertisers are located in Pike County and that they represent a major portion of station advertising revenue. In its comments in support of WGEM-TV's petition, KHQA-TV contends that the 1993 Arbitron

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7 H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).
8 8 FCC Rcd at 2977 (emphasis in original).
9 *Id.* at 2977, 2977 n.139.
10 47 C.F.R. §76.59.
11 8 FCC Rcd at 2981.
12 It appears, based on our records and on the Warren Publishing, 1994 *Television and Cable Factbook* (*"Factbook"*), Cable Vol. 62 at D-937, D-946, D-950, and D-966, that each of the four systems serves only one community.

television viewer rating surveys in Pike County show that Pike County viewers consider the county to be a part of the Quincy-Hannibal market.

10. KSDK argues in opposition that WGEM-TV's petition is procedurally improper because it addresses Pike County in general rather than the specific communities in Pike County.[13] In addition, KSDK argues that even if the petition does not fail on procedural grounds, WGEM-TV fails to show that it should be treated as a "local" station for must-carry purposes because the petition fails to meet the four statutory factors for ADI modification, and because it ignores KSDK's presence in Pike County.[14]

11. In its opposition, Crown also argues that WGEM-TV's request exceeds the Commission's authority and is inconsistent with the intent of Congress to promote localism. In addition, Crown argues that WGEM-TV has failed to demonstrate that carriage in Bowling Green and Frankford would serve the local interests of the viewers in these communities. In support, Crown contends that WGEM-TV fails to provide any evidence, such as program logs, that it provides local programming in Pike County. In addition, Crown maintains that the Nielsen viewing data provided by WGEM-TV covering all of Pike County fails to meets the statutory standard of viewing patterns on a community basis.

12. WGEM-TV replies that neither KSDK nor Crown demonstrate sufficient grounds for denying its petition. WGEM-TV asserts that its evidence is in compliance with the Congressional directive that market modification requests be filed on a community-by-community basis and that it has made the requisite showing for market modification, including historical carriage, viewership, and local coverage. WGEM-TV notes the evidence of historical carriage in the communities of Bowling Green, Louisiana, Curryville, and Frankford, Missouri, and submits a programming log of local stories broadcast since November 1991, which, WGEM-TV states, shows that it has broadcast numerous stories involving the communities in Pike County. In addition, WGEM-TV maintains that it ranks second for all-day viewership in cable homes in Pike County, and that it places at least a Grade B contour over the four communities. WGEM-TV also argues that KSDK's opposition is without merit because it focuses on KSDK's own compliance with the statutory guidelines rather than on rebutting WGEM-TV's showing, thereby distorting the focus of the station's petition.

ANALYSIS AND DECISION

13. WGEM-TV has provided sufficient evidence to justify its market modification request and it will accordingly be granted. This modification is limited to the communities of Bowling Green, Curryville, Frankford, and Louisiana, Missouri. These four communities are the only communities specifically requested in the station's petition. The 1992 Cable Act authorizes the Commission to modify ADIs to eliminate or include "communities." We do not read the word "community" as it is used in §614(h), in its legislative history,[15] or as used in cable regulation generally, to mean "county." To allow stations or cable operators to seek to include or exclude entire counties from a particular ADI without regard to the individual circumstances of the communities or franchised areas within such counties would not facilitate an evaluation of the specific modification criteria provided for in the Act, and thus an identification of the specific communities within the county has generally been required.[16]

14. WGEM-TV has presented a persuasive case that the four communities are logically part of its market for purposes of the cable television mandatory broadcast signal carriage rules under the standards set forth in §614(h) of the 1992 Cable Act. First, WGEM-TV has been continuously carried in the communities of Bowling Green, Frankford, Louisiana and Curryville, Missouri since the cable systems serving those communities commenced operation.[17] The fact that these cable operators have continuously carried WGEM-TV demonstrates that the operators and their subscribers value the station and the service it provides. With respect to coverage and other local service to the cable community, we find that WGEM-TV has shown that it provides programs of interest to the four communities, including coverage of state and local political activities along with sports and other community-specific human interest stories. We acknowledge the arguments made by KSDK and Crown regarding WGEM-TV's failure to provide evidence of uniform coverage of all news and events in all of the communities. However, the record evidence indicates that WGEM-TV attempts to cover the important events in the four Pike County communities at issue. The detailed news log provided by WGEM-TV supports this conclusion. Furthermore, WGEM-TV has shown that it places a Grade B contour or better over the entire county. This is in contrast to KSDK, the current NBC ADI affiliate, which fails to place a grade B or better signal over approximately half of Pike County.[18] In addition, Quincy, Illinois, WGEM-TV's community of license, is generally closer to the four communities in Pike County, Missouri than are the principal communities of license in the St. Louis, Missouri ADI. Finally, WGEM-TV has also shown that the viewing pattern data in cable and noncable households demonstrates that it is watched by residents in Pike County, Missouri. The 1993-1994 Arbitron surveys show that WGEM-TV received a 12 share for total all day viewing, and the highest net weekly circulation (60%) for cable and noncable households in Pike County. We recognize that, as argued by KSDK and Crown, this viewing data is based on county-wide rather than community specific sur-

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[13] KSDK notes that WGEM's petition does not state that it is being carried on the Pike County cable system serving Eolia, Missouri. *But see* footnote 17, *infra*.

[14] In support, KSDK provides evidence showing that it meets the statutory factors for modification of a station's ADI. KSDK concludes that without a stronger showing that the residents of Pike County prefer to watch the Quincy-Hannibal market stations over the St. Louis market stations, the Commission should not modify WGEM-TV's ADI.

[15] *See* H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).

[16] We recently denied a cable operator's plea to exclude a station from particular markets partly because it asked that entire counties be removed from an ADI. *Tele-Media Corporation*, 10 FCC Rcd 134 (1995).

[17] Because WGEM-TV's petition is limited to the four communities requested, the fact that the cable system serving Eolia, Missouri is not carrying WGEM-TV does not materially affect the findings made herein.

[18] *See Factbook*, Stations Vol. 62 at A-703.

veys. However, we have held that absent evidence that such data are not fairly reflective of viewing in the actual communities in question, we shall accept such data as probative in cases of this type.

15. With respect to the third factor, we note that WGEM-TV acknowledges that numerous other stations licensed to communities within both the Quincy, Illinois-Hannibal, Missouri ADI and the St. Louis, Missouri ADI provide coverage of and programming to the communities in question. However, we do not believe that Congress intended the third criterion to operate as a bar to a station's ADI claim whenever other stations could also be shown to serve the communities at issue. Rather, we believe that this criterion was intended to enhance a station's claim where it could be shown that other stations do not serve the communities at issue. Under such circumstances, a denial of carriage rights to the claiming station could deprive cable viewers of any broadcast signals that might provide programming geared to their communities. WGEM-TV's showing on each of the other factors is sufficient, however, and even absent enhancement under the third criterion, grant of the station's request is warranted.

ORDER

16. In view of the foregoing, we find that grant of WGEM-TV's petition with respect to the communities of Bowling Green, Curryville, Frankford and Louisiana in Pike County, Missouri is in the public interest.[19]

17. Accordingly, IT IS ORDERED, pursuant to §614 of the Communications Act of 1934, as amended (47 U.S.C. §534), and §76.59 of the Commission's Rules (47 C.F.R. §76.59), that the petition for special relief filed June 2, 1993 by Quincy Broadcasting Company IS GRANTED. This change shall be effective in accordance with the following schedule: Quincy Broadcasting Company shall notify the cable systems in question in writing of its carriage and channel position election (§§76.56, 76.57, and 76.64(f) of the Commission's Rules) within 30 days of the release date of this *Memorandum Opinion and Order*. The affected cable systems shall come into compliance with the applicable rules within 60 days of the above notice. 18. This action is taken pursuant to authority delegated by §0.321 of the Commission's rules.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau

[19] This determination is subject to all generally applicable limitations on signal carriage rights, including copyright liability, channel capacity, and program duplication. *See* paragraph 7, *supra*.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re:

Pappas Stations Partnership CSR-4481-A

For Modification of the
Television Market for Station KPTM,
Omaha, NE

MEMORANDUM OPINION AND ORDER

Adopted: May 15, 1995; Released: May 25, 1995

By the Cable Services Bureau:

INTRODUCTION

1. In the captioned proceeding, Pappas Stations Partnership, licensee of television station KPTM (hereinafter "KPTM"), Omaha, Nebraska (FOX - Channel 42), has requested the Commission to include Lancaster County, or in the alternative, the city of Lincoln, within the Omaha, Nebraska "area of dominant influence" ("ADI") for the purpose of obtaining signal carriage rights on the cable systems serving that County. No oppositions were filed against this petition.

BACKGROUND

2. Pursuant to §4 of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act")[1] and implementing rules adopted by the Commission in its Report and Order in MM Docket 92-259,[2] a commercial television broadcast station is entitled to assert mandatory carriage rights on cable systems located within the station's market. A station's market for this purpose is its "area of dominant influence," or ADI, as defined by the Arbitron audience research organization.[3] An ADI is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns. Essentially, each county in the United States is allocated to a market based on which home-market stations receive a preponderance of total viewing hours in the county. For purposes of this calculation, both over-the-air and cable television viewing are included.[4]

3. Under the Act, however, the Commission is also directed to consider changes in ADI areas. Section 614(h) provides that the Commission may:

> with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's television market to better effectuate the purposes of this section.

In considering such requests, the 1992 Cable Act provides that:

> the Commission shall afford particular attention to the value of localism by taking into account such factors as:
>
> (I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community;
>
> (II) whether the television station provides coverage or other local service to such community;
>
> (III) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community; and
>
> (IV) evidence of viewing patterns in cable and non-cable households within the areas served by the cable system or systems in such community.

4. The legislative history of this provision indicates that:

> where the presumption in favor of ADI carriage would result in cable subscribers losing access to local stations because they are outside the ADI in which a local cable system operates, the FCC may make an adjustment to include or exclude particular communities from a television station's market consistent with Congress' objective to ensure that television stations be carried in the areas which they serve and which form their economic market.

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[1] Pub. L. No. 102-385, 106 Stat. 1460 (1992).

[2] *Broadcast Signal Carriage Issues*, 8 FCC Rcd 2965, 2976-2977 (1993).

[3] Section 4 of the 1992 Cable Act specifies that a commercial broadcasting station's market shall be determined in the manner provided in §73.3555(d)(3)(i) of the Commission's Rules, as in effect on May 1, 1991. This section of the rules, now redesignated §73.3555(e)(3)(i), refers to Arbitron's ADI for purposes of the broadcast multiple ownership rules. Section 76.55(e) of the Commission's Rules provides that the ADIs to be used for purposes of the initial implementation of the mandatory carriage rules are those published in Arbitron's 1991-1992 Television Market Guide.

[4] Certain counties are divided into more than one sampling unit because of the topography involved. Also, in certain circumstances, a station may have its home county assigned to an ADI even though it receives less than a preponderance of the audience in that county. Refer to Arbitron's *Description of Methodology* handbook for a more complete description of how counties are allocated.

* * * * *

> [This subsection] establishes certain criteria which the Commission shall consider in acting on requests to modify the geographic area in which stations have signal carriage rights. These factors are not intended to be exclusive, but may be used to demonstrate that a community is part of a particular station's market.[5]

5. The Commission provided the following guidance in the *Report and Order* to aid decision making in these matters:

> For example, the historical carriage of the station could be illustrated by the submission of documents listing the cable system's channel line-up (*e.g.*, rate cards) for a period of years. To show that the station provides coverage or other local service to the cable community (factor 2), parties may demonstrate that the station places at least a Grade B coverage contour over the cable community or is located close to the community in terms of mileage. Coverage of news or other programming of interest to the community could be demonstrated by program logs or other descriptions of local program offerings. The final factor concerns viewing patterns in the cable community in cable *and* non-cable homes. Audience data clearly provide appropriate evidence about this factor. In this regard, we note that surveys such as those used to demonstrate significantly viewed status could be useful. However, since this factor requires us to evaluate viewing on a community basis for cable and non-cable homes, and significantly viewed surveys typically measure viewing only in non-cable households, such surveys may need to be supplemented with additional data concerning viewing in cable homes.[6]

6. In adopting rules to implement this provision, the Commission indicated that requested changes should be considered on a community-by-community basis rather than on a county-by-county basis, and that they should be treated as specific to particular stations rather than applicable in common to all stations in the market.[7] The rules further provide, in accordance with the requirements of the 1992 Cable Act, that a station not be deleted from carriage during the pendency of an ADI change request.[8]

7. Adding communities to a station's ADI generally entitles that station to insist on cable carriage in those communities. However, this right is subject to several conditions: 1) a cable system operator is generally required to devote no more than one-third of the system's activated channel capacity to compliance with the mandatory signal carriage obligations; 2) the station is responsible for delivering a good quality signal to the principal headend of the system; 3) indemnification may be required for any increase in copyright liability resulting from carriage; and 4) the system operator is not required to carry the signal of any station whose signal substantially duplicates the signal of any other local signal carried, or the signal of more than one local station affiliated with a particular broadcast network. If, pursuant to these requirements, a system operator elects to carry the signal of only one such duplicating signal, the operator is obliged to carry the station from the ADI whose city of license is closest to the principal headend of the cable system.[9] Accordingly, based on the specific circumstances involved, the addition of communities to a station's ADI may guarantee it cable carriage and specific channel position rights, or may simply provide the system operator with an expanded list of must-carry signals from which to choose (i.e., when the system has used up its channel capacity mandated for broadcast signal carriage, or determined which of duplicating network affiliated stations are entitled to carriage priority).

MARKET FACTS AND ARGUMENTS OF THE PARTIES

8. In its petition, KPTM asks the Commission to add Lancaster County, Nebraska, which is currently in the Lincoln-Hastings-Kearney ADI, to the Omaha, Nebraska ADI so that KPTM may assert must carry rights on the cable systems serving the county. In the alternative, KPTM asks that Lincoln, Nebraska, also in the Lincoln market, be included in the Omaha ADI should the Commission opt to consider market modification requests only in the context of specific communities. Generally, the station argues that Lancaster County and Lincoln are more logically within the natural service area encompassed by the Omaha ADI and served by the several stations licensed to Omaha, including KPTM.

9. To justify its request, KPTM states that it has been carried on the principal cable system serving approximately 70,000 subscribers in Lancaster County (Lincoln Cablevision) since the station's inception in 1986. KPTM adds that it also has been carried on seven smaller cable systems also located in Lancaster County.[10] KPTM adds that it is the only FOX network affiliate currently available in Lincoln and Lancaster County and that in late January, 1995, it became the only over-the-air provider of both the WARNER BROS. and UPN networks for the same geographic areas. The station also mentions that it is aware that CBS affiliate KOLN provides service to Lincoln but notes that the presence of this station should not be a bar to its market modification request. With respect to coverage and local service, KPTM states that its Grade A signal covers virtually all of Lancaster County and its Grade B signal extends well beyond the county borders to the south, west and north. KPTM notes that it meets the local needs of Lincoln and Lancaster County in a variety of ways, including local news coverage and general public service undertakings as well as participation in a variety of community activities. As for local viewing patterns, KPTM maintains that it has substantial viewership in Lancaster County with viewing data showing that it accorded a total viewing share of 23 in the county in the 11-11:30 PM

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[5] H.R. Rep. 102-628, 102d Cong., 2d Sess. at 97 (1992).
[6] 8 FCC Rcd at 2977 (emphasis in original).
[7] *Id.* and n.139.
[8] 47 C.F.R. §76.59.
[9] 8 FCC Rcd at 2981.
[10] The station notes that these seven other cable systems have a total subscribership of approximately 1,100 among them and none serving communities with a population larger than 2,000 people.

period (M-F) in May 1994 and achieved a net weekly circulation in excess of 50% in the same area during the same time frame.

ANALYSIS AND DECISION

10. KPTM has provided sufficient evidence to justify its market modification request and it will accordingly be granted. However, we limit the modification to the City of Lincoln, Nebraska because The 1992 Cable Act authorizes the Commission to modify ADI's to eliminate or include "communities." To allow stations or cable operators to seek to include or exclude entire counties from a particular ADI without regard to the individual circumstances of the communities or franchised areas within such counties would not facilitate an evaluation of the specific modification criteria provided for in the Act and thus an identification of the specific communities within the county has generally been required. In fact, we recently based our decision to deny station WOWT's plea to include Lancaster County, Nebraska, in its entirety, into the Omaha ADI on these same grounds.[11]

11. Turning to the factors specified in the 1992 Cable Act, we find that KPTM has met all four statutory elements. As KPTM's pleading states, the station has been carried on the principal cable system serving Lincoln for almost ten years. The viewing pattern data in cable and non-cable households also demonstrates that KPTM has a strong marketplace presence in Lincoln. The station has a 66 net weekly circulation in cable and non-cable households and its viewing share is 12.[12] With respect to coverage and local service to the cable communities, KPTM has shown that it places a Grade A contour over Lincoln.[13] We also believe that KPTM has shown that it provides Lincoln residents with locally oriented programming including coverage of local news and other community-specific stories of interest. A detailed programming log provided by KPTM supports this conclusion. Finally, KPTM makes a successful showing under the third statutory factor despite the presence of KOLN in the Lincoln-Hastings-Kearney ADI.

ORDER

12. Accordingly, IT IS ORDERED, pursuant to §614 of the Communications Act of 1934, as amended (47 U.S.C. §534), and §76.59 of the Commission's Rules (47 C.F.R. §76.59), that the petition for special relief filed February 24, 1995 by Pappas Stations Partnership IS GRANTED with respect to the City of Lincoln, Nebraska. Station KPTM shall notify the cable system in question in writing of its carriage and channel position elections, (§§76.56, 76.57, 76.64(f) of the Commission's Rules), (within thirty (30) days of the release date of this *Memorandum Opinion and Order*. The affected cable system shall come into compliance with the applicable rules within sixty (60) days of such notification.

13. This action is taken pursuant to authority delegated by §0.321 of the Commission's rules.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau

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[11] *See WOWT-TV*, DA 95-802 (released: April 18, 1995).

[12] *See* Arbitron's Television County Coverage for 1993. These data are county-based for Lancaster, Nebraska, rather than community-specific. However, absent evidence that such data are not fairly reflective of viewing in the actual communities in question, such data are acceptable as probative, although not conclusive, in cases of this type.

[13] The Commission has held that Grade B coverage demonstrates service. *See* 8 FCC Rcd at 2981.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re:

Broad Street Television, L.P. CSR-3868-A
Davenport, Iowa

For Modification of Station KWQC-TV's ADI

MEMORANDUM OPINION AND ORDER

Adopted: May 15, 1995; Released: May 25, 1995

By the Cable Services Bureau:

INTRODUCTION

1. Broad Street Television, L.P. ["KWQC-TV"], licensee of Station KWQC-TV (NBC, Channel 6), Davenport, Iowa, has filed a petition for special relief seeking to establish mandatory carriage rights on the cable system serving Iowa City, Coralville, University Heights, and portions of Johnson County, Iowa, operated by TCI of Eastern Iowa ["TCI"]. Essentially, by this petition KWQC-TV seeks to modify its Davenport, Iowa--Rock Island-Moline, Illinois Area of Dominant Influence ("ADI") to include the communities served by TCI. An opposition to this petition was filed on behalf of AFLAC Broadcast Partners ["KWWL"], licensee of Television Broadcast Station KWWL (NBC, Channel 7), Waterloo, Iowa, to which KWQC-TV has replied.[1]

BACKGROUND

2. Pursuant to §4 of the Cable Television Consumer Protection and Competition Act of 1992 ["1992 Cable Act"][2] and implementing rules adopted by the Commission in its *Report and Order in MM Docket 92-259*,[3] a commercial television broadcast station is entitled to assert mandatory carriage rights on cable systems located within the station's market. A station's market for this purpose is its "area of dominant influence," or ADI, as defined by the Arbitron audience research organization.[4] An ADI is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns. Essentially, each county in the United States is allocated to a market based on which home-market stations receive a preponderance of total viewing hours in the county. For purposes of this calculation, both over-the-air and cable television viewing are included.[5]

3. Under the 1992 Cable Act, however, the Commission is also directed to consider changes in ADI areas. Section 614(h) provides that the Commission may:

> with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's television market to better effectuate the purposes of this section.

In considering such requests, the 1992 Cable Act provides that:

> the Commission shall afford particular attention to the value of localism by taking into account such factors as--
>
> (I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community;
>
> (II) whether the television station provides coverage or other local service to such community;
>
> (III) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community; and
>
> (IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.[6]

4. The legislative history of this provision indicates that:

> where the presumption in favor of ADI carriage would result in cable subscribers losing access to local stations because they are outside the ADI in which a local cable system operates, the FCC may make an adjustment to include or exclude particular communities from a television station's market consistent with Congress' objective to ensure that television stations be carried in the areas which they serve and which form their economic market.

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[1] A statement in support of KWWL's opposition was filed by Station KCRG-TV (ABC, Channel 9), Cedar Rapids, Iowa. However, no separate information was submitted.

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992).

[3] 8 FCC Rcd 2965, 2976-2977 (1993).

[4] Section 4 of the 1992 Cable Act specifies that a commercial broadcasting station's market shall be determined in the manner provided in §73.3555(d)(3)(i) of the Commission's Rules, as in effect on May 1, 1991. This section of the rules, now redesignated §73.3555(e)(3)(i), refers to Arbitron's ADI for purposes of the broadcast multiple ownership rules. Section 76.55(e) of the Commission's Rules provides that the ADIs to be used for purposes of the initial implementation of the mandatory carriage rules are those published in Arbitron's 1991-1992 *Television Market Guide*.

[5] Because of the topography involved, certain counties are divided into more than one sampling unit. Also, in certain circumstances, a station may have its home county assigned to an ADI even though it receives less than a preponderance of the audience in that county. For a more complete description of how counties are allocated, *see* Arbitron's *Description of Methodology*.

[6] 47 U.S.C. §534(h)(1)(C)(ii).

* * * * *

> [This subsection] establishes certain criteria which the Commission shall consider in acting on requests to modify the geographic area in which stations have signal carriage rights. These factors are not intended to be exclusive, but may be used to demonstrate that a community is part of a particular station's market.[7]

5. The Commission provided guidance in *MM Docket 92-259, supra,* to aid decision making in these matters, as follows:

> For example, the historical carriage of the station could be illustrated by the submission of documents listing the cable system's channel line-up (*e.g.*, rate cards) for a period of years. To show that the station provides coverage or other local service to the cable community (factor 2), parties may demonstrate that the station places at least a Grade B coverage contour over the cable community or is located close to the community in terms of mileage. Coverage of news or other programming of interest to the community could be demonstrated by program logs or other descriptions of local program offerings. The final factor concerns viewing patterns in the cable community in cable *and* noncable homes. Audience data clearly provide appropriate evidence about this factor. In this regard, we note that surveys such as those used to demonstrate significantly viewed status could be useful. However, since this factor requires us to evaluate viewing on a community basis for cable and noncable homes, and significantly viewed surveys typically measure viewing only in noncable households, such surveys may need to be supplemented with additional data concerning viewing in cable homes.[8]

6. In adopting rules to implement this provision, the Commission indicated that changes requested should be considered on a community-by-community basis rather than on a county-by-county basis, and that they should be treated as specific to particular stations rather than applicable in common to all stations in the market.[9] The rules further provide, in accordance with the requirements of the 1992 Cable Act, that a station not be deleted from carriage during the pendency of an ADI change request.[10]

7. Adding communities to a station's ADI generally entitles that station to insist on cable carriage in those communities. However, this right is subject to several conditions: 1) a cable system operator is generally required to devote no more than one-third of the system's activated channel capacity to compliance with the mandatory signal carriage obligations; 2) the station is responsible for delivering a good quality signal to the principal headend of the system; 3) indemnification may be required for any increase in copyright liability resulting from carriage; and 4) the system operator is not required to carry the signal of any station whose signal substantially duplicates the signal of any other local signal carried, or the signal of more than one local station affiliated with a particular broadcast network. If, pursuant to these requirements, a system operator elects to carry the signal of only one such duplicating signal, the operator is obliged to carry the station from the ADI whose city of license is closest to the principal headend of the cable system.[11] Accordingly, based on the specific circumstances involved, the addition of communities to a station's ADI may guarantee it cable carriage and specific channel position rights, or may simply provide the system operator with an expanded list of must-carry signals from which to choose (*i.e.*, when the system has used up its channel capacity mandated for broadcast signal carriage, or determined which of duplicating network affiliated stations are entitled to carriage priority).

MODIFICATION ARGUMENTS

8. The communities served by TCI's cable system are located within the Cedar Rapids-Waterloo-Dubuque, Iowa ADI. KWQC-TV is part of the Davenport, Iowa-Rock Island-Moline, Illinois ADI. The station is located less than 50 miles from Iowa City, and its predicted Grade B contour encompasses the system.

9. In support of its petition, KWQC-TV states that it was carried on TCI's system from the time it first went on the air in July 1980 using the call letters WOC-TV until June 1991.[12] KWQC-TV maintains that it should be afforded must carry status on TCI's system for the following reasons: 1) it provides a predicted Grade B off-air signal to Iowa City; 2) its transmitter is closer to Iowa City (45.155 miles) than the system's own market NBC affiliate, KWWL (74.163 miles); 3) KWQC-TV is considered to be significantly viewed in Johnson County where the system is located and would not be subject to distant signal copyright liability; and 4) Iowa City and Davenport are considered to be in the same Congressional district and therefore the political news and issues discussed on KWQC-TV's news and public affairs programs would be of increased interest to Iowa City residents. KWQC-TV argues further that it affords substantial local programming service to the Iowa City system and enjoys a large viewership in that area. Indeed, it received numerous letters complaining about its lack of carriage. For example, KWQC-TV states that from January through April 1993 it broadcast 125 news broadcasts specifically oriented to Iowa City including such issues as sports, weather, crime and health. In addition, it points to a "Consumer Market Survey of Cable Subscribers for the City of Iowa City, Iowa," conducted by Rice, Williams Associates in April 1992 as part of TCI's franchise renewal, which indicates that 34% of TCI's cable susbscribers were "interested" or "very interested" in receiving KWQC-TV, while an additional 15% indicated some interest.

10. In its opposition, KWWL argues that KWQC-TV was dropped from TCI's system over two years ago due to exceedingly low viewership in Iowa City and Johnson County. KWWL maintains that this absence has not dis-

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[7] H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).
[8] *Id.* at 2977 (emphasis in original).
[9] *MM Docket 92-259*, 8 FCC Rcd at 2977, 2977 n.139.
[10] 47 C.F.R. §76.59.
[11] *MM Docket 92-259*, 8 FCC Rcd at 2981.
[12] The operator of the cable system at that time was Hawkeye Cable Vision Corp.

rupted the viewing patterns for the system's subscribers nor has there been any significant loss in the availability of local informational programming, and that there is therefore no need to extend outside Iowa City's home market to remedy an nonexistent problem. Indeed, KWWL states that its programming, and that of the other Cedar Rapids-Waterloo-Dubuque ADI stations,[13] provides substantial coverage of Johnson County news and events and this is reflected in their substantial ratings in Johnson County, unlike KWQC-TV, whose current ratings indicate a decline in viewership.[14] In comparison to KWQC-TV, for instance, KWWL states that from January through April 1993, it ran 110 different news stories originating in Iowa City or Johnson County,. and that from mid-December 1992 through June 1993 it carried 148 sports programs originating in and around Iowa City. In addition, KWWL indicates that it provides important weather and emergency information for Johnson County and is also the county's number one radio station's (KKRQ-FM) full-time weather service. Moreover, KWWL indicates that in 1992 it was listed as "Best Local TV Newscast" and "Best TV Editorialist" by *Iowa City Magazine*. Further, a telephone survey of Johnson County commissioned by KWWL indicates strong viewer preference for the Cedar Rapids-Waterloo-Dubuque ADI stations for local news and informational programming.[15] No respondent even mentioned KWQC-TV. In addition, not only has TCI not received any letters from its subscribers complaining about KWQC-TV's deletion, but of the letters submitted by KWQC-TV in its petition, only 5 out of 32 mention KWQC-TV specifically and only 2 specifically express concern about the loss of KWQC-TV's Iowa City news. The majority are complaints about the lack of the Davenport-Rock Island-Moline ADI stations in general. Finally, KWWL expresses its concern that grant of KWQC-TV's request might undercut KWWL's own carriage rights since as a more distant duplicating network station, it could face deletion if KWQC-TV is added to TCI's system. KWWL concludes that therefore TCI's viewers would thus be deprived of station that has provided service to Iowa City for over 40 years.

11. KWQC-TV's reply argues that KWWL's opposition is apparently based on the theory that only the highest-rated stations in a county can be considered to be "local". In any event, it states that KWWL confuses county-wide ratings with community-specific data nor can the objectivity of its privately-commissioned telephone be relied upon. A more telling source, it avers, would be the TCI franchising survey it pointed to in its original petition. Moreover, KWQC-TV maintains that there is no dispute with the fact of its station's historical carriage, its Grade B coverage of the system, or the greater interest in political news from a station from within the same congressional district. Finally, KWQC-TV avers that KWWL's speculations as to why TCI dropped the station are unsupported by any facts. Indeed, KWQC-TV's argues that it is revealing that no opposition to its request has been received from TCI itself.

DISCUSSION

12. We are not persuaded by the arguments raised by KWQC-TV and we will deny its petition. While KWQC-TV does meet the second criteria in that its Grade B contour encompasses the communities served by TCI's cable system, it fails to meet the other three criteria. First, there is no consistent historic carriage on the cable system. While it it true that KWQC-TV was carried for a number of years on TCI's system, the station was dropped nearly four years ago. The fact that TCI has not given its reasons for doing so, nor participated in this proceeding, does not negate its justification for dropping the station. Second, KWQC-TV has provided an insufficient showing to refute the fact that there appears to be more than adequate local coverage provided by TCI's own Cedar Rapids-Waterloo-Dubuque market stations. A few examples of letters from dissatisfied subscribers and a franchise renewal survey are not sufficient to prove that KWQC-TV's is invaluable to the Iowa City area. Third, the most current survey information from Arbitron's 1993 *Television County Coverage: Iowa* (Standard/Fringe), for both cable and noncable homes, indicates that KWQC-TV's viewership is negligible at best for Johnson County—no viewing share on cable, only a 2 share off-air, and very low net weekly circulation in both cases--which clearly indicates a lack of interest in the station. Finally, we note that a grant of KWQC-TV's request would relegate TCI's own market NBC station, KWWL, which itself places a Grade B contour over the communities in question, to the status of the more distant network affiliate, a move which would jeopardize KWWL's must carry status within its own ADI market. Clearly, this would not be a situation either intended nor envisioned by the 1992 Cable Act.

13. In view of the foregoing, we find that grant of KWQC-TV's petition is not in the public interest.

ORDER

14. Accordingly, IT IS ORDERED, pursuant to §614(h)(1)(C) of the Communications Act of 1934, as amended (47 U.S.C. §534(h)(1)(C)) and §76.59 of the Commission's Rules (47 C.F.R. §76.59), That the petition for special relief filed by Broad Street Television, L.P. IS DENIED.

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[13] The other ADI stations are KCRG-TV (ABC, Channel 9), and KGAN (CBS, Channel 2), both Cedar Rapids, Iowa.

[14] 1993 Nielsen County/Coverage Summary data for Johnson County indicates the following:

Sun. thru Sat.

Broadcasting Week	Total share	Cable share	Noncable share
KWQC-TV	1%	1%	1%
KWWL	19%	18%	20%
KGAN	20%	19%	22%
KCRG-TV	27%	25%	34%

10:00 p.m. Newscasts
KWQC-TV -- 1%
KWWL -- 15%
KGAN --19%
KCRG-TV --47%

[15] "A Study of Viewer Attitudes" prepared by Audience Research & Development July 1993.

15. This action is taken pursuant to authority delegated by §0.321 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

CS Docket No. 94-95

In the Matter of

Amendment of Section 76.51
of the Commission's Rules
to Include Lakeland, Florida
in the Tampa-St. Petersburg-
Clearwater, Florida Television Market

REPORT AND ORDER

Adopted: May 16, 1995; Released: May 25, 1995

By the Cable Services Bureau:

1. Before the Commission is the *Notice of Proposed Rule Making* in the captioned proceeding,[1] issued in response to a petition filed by Public Interest Corporation, licensee of television station WTMV(TV), channel 32, Lakeland, Florida ("WTMV"). The *Notice* proposed to amend Section 76.51 of the Commission's Rules,[2] to change the designation of the Tampa-St. Petersburg-Clearwater, Florida television market to "Tampa-St. Petersburg-Clearwater-Lakeland, Florida." No comments in opposition to this proposal have been filed.

BACKGROUND

2. Section 76.51 of the Commission's Rules enumerates the top 100 television markets and the designated communities within those markets. Among other things, this market list is used to determine the scope of territorial exclusivity rights that television broadcast stations may purchase and, in addition, may help define the scope of compulsory copyright license liability for cable operators in certain circumstances.[3] Certain cable elevision syndicated exclusivity and network nonduplication rights are also determined by the presence of broadcast station communities of license on this list.[4] Some of the markets consist of more than one named community (a "hyphenated market"). Such "hyphenation" of a market is based on the premise that stations licensed to any of the named communities in the hyphenated market do, in fact, compete with all stations licensed to such communities.[5] Market hyphenation "helps equalize competition" where portions of the market are located beyond the Grade B contours of some stations in the area yet the stations compete for economic support.[6]

3. Section 4 of the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act"),[7] which amended Section 614 of the Communications Act of 1934, as amended ("Act"),[8] requires the Commission to make revisions needed to update the list of top 100 television markets and their designated communities in Section 76.51 of the Commission's Rules.[9]

RULE MAKING COMMENTS

4. The petitioner contends that WTMV in Lakeland competes directly with television stations in the Tampa-St. Petersburg-Clearwater hyphenated market for audience share and advertising revenues. Although Lakeland is located inside the Tampa-St. Petersburg "area of dominant influence" ("ADI"), the petitioner argues that because Lakeland is not a designated community in the above market, WTMV is considered a "distant signal" for purposes of compulsory copyright license liability if carried on cable systems more than 35 miles from Lakeland. According to the petitioner, the consequence of being classified as a "distant signal" is that cable systems will have to pay significant copyright royalties in order to carry WTMV, and WTMV, in turn, will have to indemnify the cable systems for these royalties. In contrast, stations licensed to communities specifically designated in Section 76.51 are considered local for all cable systems within the 35-miles zones of the listed communities in a given hyphenated market and are not subject to copyright liability. The petitioner asserts that because WTMV may have to pay copyright fees attendant to its carriage as a "distant signal" that stations in Tampa. St. Petersburg and Clearwater do not, WTMV is disadvantaged in its competition with these stations.

5. In support of its proposal, the petitioner states that it meets all of the criteria stipulated by the Commission for redesignation of the hyphenated market. The petitioner contends that Lakeland is sufficiently proximate to Tampa, St. Petersburg and Clearwater to be considered part of the Tampa-St. Petersburg-Clearwater hyphenated market. According to the petitioner, Lakeland is only 31 miles from Tampa, 47 miles from St. Petersburg, and 50 miles from Clearwater. The petitioner maintains that because of this geographic proximity, Lakeland, Tampa, St. Petersburg and Clearwater have shared economic, social and cultural interests which link them together as a single television market. The petitioner submits a contour map showing that WTMV provides city grade contour coverage to part of Tampa, Grade A contour coverage to virtually all of Tampa, and Grade B contour coverage to all of St. Petersburg. Clearwater is just beyond WTMV's Grade B contour, however, it is part of the Tampa-St. Petersburg ADI. A map delineating the Grade B contours of stations in the Tampa

[1] 9 FCC Rcd 4398 (1994).
[2] 47 C.F.R. §76.51.
[3] *See* 47 C.F.R. §73.658(m) and 17 U.S.C. §111(f).
[4] *See* 47 C.F.R. Part 76, subpart F.
[5] See CATV-Non Network Agreements, 46 FCC 2d 892, 898 (1974).
[6] *Cable Television Report & Order*, 36 FCC 2d 143, 176 (1972).
[7] Cable Television Consumer Protection and Competition Act, Pub. L. No. 102-385, 106 Stat. 1460 (1992).
[8] 47 U.S.C. §614.
[9] *See* Section 614(f) of the Act.

area reveals that the signal contours of WTMV substantially overlap with the signal contours of other stations in the Tampa-St. Petersburg ADI. To further support its contention that WTMV competes directly with Tampa market stations and is an integral part of the Tampa-St. Petersburg ADI, the petitioner asserts that WTMV is widely recognized as a Tampa market station. In particular, the petitioner notes the following: Tampa newspapers and magazines include WTMV in television program listings; Tampa-based publications have recognized the station for its programming and commitment to local service; program syndicators charge WTMV Tampa market rates for programming; and Tampa businesses as well as regional and national advertisers buy time on WTMV. In addition, the petitioner states that WTMV carries many ABC, NBC and CBS programs when the Tampa network affiliates preempt their network programming and that WTMV is the Tampa television affiliate for the Florida Marlins major league baseball club. The petitioner urges the Commission to add Lakeland to the Tampa-St. Petersburg-Clearwater hyphenated market in order to redress what the petitioner perceives as a competitive imbalance between WTMV and stations licensed to Tampa, St. Petersburg and Clearwater.

DISCUSSION

6. A "hyphenated market" has been described by the Commission as a television market that contains more than one major population center supporting all stations in the market, with competing stations licensed to different cities within the market area.[10] In evaluating past requests for hyphenation of a market, the Commission has considered the following as relevant to its examination: (1) the distance between the existing designated communities and the community proposed to be added to the designation; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area;[11] (3) the presence of a clear showing of a particularized need by the station requesting the change of market designation; and (4) an indication of benefit to the public from the proposed change.[12] Each of these factors helps the Commission to evaluate individual market conditions consistent "with the underlying competitive purpose of the market hyphenation rule to delineate areas where stations can and do, both actually and logically, compete."[13]

7. Based on the facts presented here, we believe that a case for redesignation of the subject market has been set forth so that this proposal should be adopted. It appears from the information before us that television stations licensed to Tampa, St. Petersburg, Clearwater and Lakeland do compete for programming, audience and advertisers in the proposed combined market area, and that sufficient evidence has been presented to demonstrate commonality between the proposed community to be added to the market designation and the market as a whole. In addition, no oppositions to the proposed re-hyphenation have been filed.

8. We note that the issue raised by the petitioner regarding WTMV's copyright license liability has largely been resolved with the passage of the Satellite Home Viewer Act of 1994,[14] which amended Section 111(f) of title 17, United States Code.[15] Under this Act, a station located within the same ADI as a cable system is no longer considered a "distant signal" on that system for purposes of compulsory copyright license liability and, therefore, is not subject to the additional copyright fees attendant to "distant signal" carriage within the market.[16] Applying the Act to the facts of this proceeding, WTMV would not be considered a "distant signal" if carried on cable systems located in the Tampa-St. Petersburg ADI and, therefore, would not face additional copyright fees relative to other stations located within the same ADI. Nevertheless, we find that the equalization of the regulatory status of WTMV with stations in Tampa, St. Petersburg and Clearwater through the inclusion of Lakeland as a named community in the market is warranted given that WTMV competes with these stations for programming, audience and advertisers. Such a rationalization of the competitive situation appears to be the public benefit which congress anticipated by instructing the Commission, in Section 614(f) of the Cable Television Consumer Protection and Competition Act of 1992, to make necessary revisions to update the market list.

9. This proceeding is not intended to address the specific mandatory cable carriage, syndicated exclusivity or network nonduplication obligations of individual cable systems. Redesignation of the market reflects in the rules the general competitive situation that in fact exists in the local area, allowing the application of the more specific rules, including those relating to "area of dominant influence" changes, to be addressed from the perspective of a properly defined market area. Accordingly, the proposed rule change will be adopted.

10. Accordingly, IT IS ORDERED, that effective [30 days after publication in Federal Register], Section 76.51 of the Commission's Rules IS AMENDED to include Lakeland, Florida, as follows:

Tampa-St. Petersburg-Clearwater-Lakeland, Florida

11. IT IS FURTHER ORDERED, that this proceeding IS TERMINATED.

12. This action is taken by the Cable Services Bureau pursuant to authority delegated by Section 0.321 of the Commissions rules. 47 C.F.R. §0.321

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[10] *Cable Television Report and Order*, 36 FCC 2d 143, 176 (1972).

[11] This concern -- that cable carriage might be provided in areas beyond a stations Grade B signal contour -- has reduced relevance under the must-carry rules included in the 1992 Cable Act which are based on "Area of Dominant Influence" geographic market areas rather than on Grade B contours.

[12] *See e. g., Fresno-Visalia, California*, 57 R.R. 2d 1122, 1124 (1985); *TV 14, Inc. (Rome, Georgia)*, 7 FCC Rcd 8591 (1992).

[13] See, e.g., TV 14, Inc. (Rome, Ga.), 7 FCC Rcd 8591, 8592 (1992), *citing Major Television Markets (Fresno-Visalia, California)*, 57 RR 2d 1122, 1124 (1985). *See, also, Press Broadcasting Company, Inc.*, 8 FCC Rcd 94, 95 (1993).

[14] Satellite Home Viewer Act of 1994, P.L. 103-369, 108 Stat. 3477 (1994).

[15] 17 U.S.C. §111(f). Public Interest Corporation filed its petition for rule making to amend Section 76.51 of the Commission's Rules on December 16, 1993, prior to the passage of the Satellite Home Viewer Act which was signed into law on October 18, 1994.

[16] 108 Stat. 3481.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief. Cable Services Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

SAMMONS	Middlebury, CT
COMMUNICATIONS OF	Plymouth, CT
CONNECTICUT, INC.	Prospect, CT
	Waterbury, CT
	Wolcott, CT

Appeal of Local Rate Order of the
Connecticut Department of
Public Utility Control

Request for Stay
of Local Rate Order of the
Connecticut Department of
Public Utility Control

ORDER

Adopted: March 8, 1995; Released: March 9, 1995

By the Chief, Cable Services Bureau:

I. INTRODUCTION

1. On September 16, 1994, Sammons Communications of Connecticut, Inc. ("Sammons"), filed an Appeal ("Appeal") of a local rate order of the Connecticut Department of Public Utility Control ("DPUC"), dated August 17, 1994, for the communities of Middlebury; Plymouth; Prospect; Waterbury; and Wolcott.[1] On September 16, 1994, Sammons also filed a Request for Stay of the Local Rate Order.[2]

2. In its local rate order, the DPUC approved Sammons' rate for its basic tier service and established regulated rates for Sammons's equipment and installations, pursuant to the Cable Television Consumer Protection and Competition Act of 1992.[3] The DPUC also ordered Sammons to issue refunds or credits to subscribers for those equipment and installation charges collected between September 1, 1993 and July 14, 1994, which were in excess of Sammons's maximum permitted rates.

3. In its Appeal, Sammons challenges those portions of the local rate order in which the DPUC (1) lowered Sammons' equipment and installation charges and ordered Sammons to refund any charges in excess of the prescribed rates; and (2) revised Sammons' monthly equipment revenue figure on Line 104 of FCC Form 393.[4] The DPUC contends that Sammons wrongly computed its Hourly Service Charge ("HSC") by understating the percentage of labor hours associated with installations, thereby causing its equipment and installation rates to be impermissibly high. Sammons requests that the Commission remand the local rate order to the DPUC with instructions (1) to desist from prescribing Sammons' HSC and related equipment and installation charges based upon selectively updated data; (2) to approve Sammons' actual equipment costs; and (3) to desist from revising Sammons' estimate of its monthly equipment revenues. It is the DPUC's position that its local rate order is reasonable, and therefore, Sammons' Appeal should be dismissed.

II. STANDARD OF REVIEW

4. Under the Commission's rules, appeals of franchising authorities' local rate orders are reviewed by the Commission.[5] In ruling on an appeal of a local rate order, the Commission will not conduct a *de novo* review, but instead will sustain the franchising authority's decision as long as there is a reasonable basis for that decision.[6] Therefore, the Commission will reverse a franchising authority's decision only if it determines that the franchising authority acted unreasonably in applying the Commission's rules in rendering a local rate order.[7] If the Commission reverses a franchising authority's decision, it will not substitute its own decision but instead will remand the issue to the franchising authority with instructions to resolve the case consistent with the Commission's decision on appeal.[8]

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[1] The DPUC filed an Opposition to Sammons's Appeal ("Opposition") on October 3, 1994. Sammons filed a Reply to the DPUC's Opposition on October 13, 1994.

[2] As discussed in paragraph 13, *infra*, this Request for Stay is dismissed as moot in light of the decision on the merits herein.

[3] Under the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"), and the Commission's implementing regulations, local franchising authorities may regulate rates for basic cable service, associated equipment, and installations. *See* Cable Television Consumer Protection and Competition Act, Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(b), 47 U.S.C. § 543(b).

[4] As part of the rate review process, Sammons submitted an FCC Form 393 ("Determination of Maximum Initial Permitted Rates for Regulated Cable Programming Services and Equipment") to the DPUC on or about November 10, 1993. Local franchising authorities review the information contained in the FCC Form 393, or its successor forms, in order to determine cable operators' maximum permitted rates for basic service, associated equipment, and installations under the Commission's rate regulations. *See*, Report and Order and Further Notice of Proposed Rulemaking in MM Docket 92-266, 8 FCC Rcd 5631, 5770 (1993) (*"Rate Order"*).

[5] 47 C.F.R. §76.944.

[6] *Rate Order* at 5731; Third Order on Reconsideration in MM Docket 92-266, 9 FCC Rcd 4316, 4346 (1994) (*"Third Order on Reconsideration"*). As part of its Appeal, Sammons has alleged that the DPUC has failed to demonstrate that Sammons's rates were unreasonable. Pursuant to §76.937 of the Commission's rules, cable operators bear the burden of proving that their existing or proposed rates for basic service and associated equipment are in compliance with the Commission's regulations. Therefore, Sammons's assertion that the DPUC failed to demonstrate that Sammons's rates were unreasonable is insufficient to overturn the DPUC's determination. In the local ratemaking proceeding, Sammons had the burden of proof on this issue, not the DPUC.

[7] *Id.*

[8] *Id.*

III. DISCUSSION

5. The sole issue raised in Sammons's Appeal involves the calculation of Sammons' permitted equipment and installation charges in Part III of FCC Form 393. FCC Form 393 is the official form used by cable operators to determine whether their regulated rates for programming, equipment and installations are reasonable. FCC Form 393 is divided into three (3) separate, but interrelated parts. In Part II, the operator calculates its permitted programming rates, while in Part III, the operator calculates its permitted equipment and installation rates. Part I is a cover sheet that lists the various programming, equipment and installation rates that have been calculated in Parts II and III and compares them to the rates the operator has actually charged during the period under review.

6. The operator's maximum permitted rates are derived by completing Parts II and III of FCC Form 393, pursuant to which the operator calculates the actual aggregate revenues collected by the operator for regulated programming, equipment and installation, as of the initial date of regulation or as of September 30, 1992.[9] After calculating actual aggregate revenues, the operator converts those revenues to a per-channel rate, and then compares the per-channel figures to the applicable benchmark rate. If the per-channel rate exceeds the benchmark rate, the operator must reduce the per-channel rate to the benchmark rate or by 10%, whichever is less. Maximum permitted rates for equipment and installation are based on actual cost and are calculated in Part III of FCC Form 393.

7. The DPUC maintains that Sammons wrongly computed its HSC by understating the percentage of labor hours associated with installations. Based upon Sammons' responses to interrogatories posed by the DPUC, the DPUC included an additional 928 hours in Sammons' HSC calculation.[10] Based upon this revised calculation, the DPUC lowered Sammons' permitted HSC from $47.50 to $42.14. The DPUC then made corresponding adjustments to Sammons' equipment and installation charges, based upon this lower HSC.

8. Sammons claims that the Commission's rules prohibit the DPUC from refreshing data by using updated information based on actual experience to lower rates that Sammons established based upon accurate estimates of revenue prior to becoming subject to rate regulation. The DPUC, however, claims that it is not "refreshing" the data, but rather that it is using data which was developed for the first time during the rate review process, and which was the only available data upon which to assess the reasonableness of the filing made by Sammons. The DPUC claims that since Sammons' actual experience is so different from its estimate, the DPUC finds Sammons' estimate to be unreasonable. Sammons responds that rates set in accordance with then-current data should not be deemed unreasonable solely on account of subsequent changes in that data.[11] The DPUC acknowledges that the Commission's rules generally prohibit rate changes based upon updated data, but it notes that there must at least be justification to support the operator's original data. The DPUC claims that Sammons did not carry its burden of proving that its equipment rates complied with the 1992 Cable Act and the Commission's rules because when Sammons submitted its FCC Form 393, it failed to include any of the required attachments to support its conclusion regarding the labor hours it used in its HSC calculation.[12] The DPUC further claims that Sammons submitted evasive responses to the DPUC's several requests for justification for its labor hours estimate. The DPUC states that the only evidence available to it in the record was the actual number of hours which Sammons employees spent on installations for the period of time between September 1, 1993 and May 14, 1994, which Sammons submitted to the DPUC for purposes of the DPUC's determination of Sammons' refund liability. Therefore, the DPUC relied upon these actual installation hours when it adjusted Sammons' labor hours.

9. Sammons further claims that the DPUC selectively updated the data which Sammons used to derive its HSC. In revising Sammons' HSC calculations, the DPUC replaced Sammons' estimate of installation labor hours with actual labor hour data without also updating, based on actual data, Sammons' related equipment and installation capital costs and operating expenses, which are calculated in Schedules A and B of Part III of FCC Form 393, and then entered in Line 1 of Step A of Part III. Sammons claims that the DPUC prescribed an HSC that was impermissibly low, because it divided data based upon Sammons' estimated costs and expenses by the DPUC's revised number of labor hours. The DPUC claims that it fairly and rationally accounted for the increased direct and indirect additional labor hours by upwardly adjusting Sammons' customer equipment percentage on Line 2 of Step A of FCC Form 393 by nearly a full percentage point.[13] However, Sammons contends that the DPUC

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[9] An operator must calculate its rate in effect on September 30, 1992, only if its current rate is above the benchmark rate. If an operator's current rate is at or below the benchmark rate, it is not required to calculate its September 30, 1992 per-channel rate.

[10] Among other things, the DPUC's interrogatories asked for Sammons's actual equipment and installation costs for the period of time between September 1, 1993 and May 14, 1994. Based upon Sammons' responses, the DPUC increased Sammons' annual labor hours on Line 4 of Step A from 9,200 to 10,128 to reflect the actual number of labor hours spent on installations by Sammons' technicians.

[11] *See* "Questions and Answers on Cable Television Rate Regulation" at 4 (June 1, 1994).

[12] *See* FCC Form 393, at Line 4, Step A.

[13] Sammons' estimate of 9,200 annual labor hours was based upon its assumption that its 23 field technicians spend approximately 20% of their time on equipment maintenance and installations. The revised figure of 10,128 hours would equate to 22% of the technicians' time. The DPUC, therefore, used 22%, instead of 20%, to allocate the variable costs associated with equipment installation and maintenance. The resulting overall customer equipment percentage was 16.79%. In order to recognize the corrected labor hour information Sammons supplied to it, the DPUC employed the 16.79% customer equipment percentage figure when it revised Sammons' HSC, rather than the figure of 17.21% used by Sammons in its FCC Form 393 filing. Because this revised allocation percentage was lower than that contained in Sammons' FCC Form 393, it resulted in a reduction in Sammons' total costs for installation and maintenance of equipment. This fact, together with the higher number of labor hours, resulted in a reduction of Sammons' HSC from $47.50 to $42.14. This reduction in Sammons' HSC translates into lower maximum permitted equipment and installation rates. Local Rate Order, at 8-9.

should have used Sammons' actual capital costs and operating expenses in order to accurately account for its increased service installation and maintenance of equipment.

10. Finally, Sammons contends that the DPUC improperly revised its Line 104 figure representing monthly equipment revenue from $63,991 to $63,144. It is Sammons' position that it properly provided the DPUC with a reasonable estimate of its monthly equipment revenue, rather than actual monthly equipment revenue, because Sammons did not provide subscriber equipment on an unbundled basis prior to rate regulation. Thus, it is Sammons' position that it acted in accordance with the Commission's directive to use anticipated revenues because its actual revenues were not available.[14] The DPUC revised the Line 104 figure in order to keep this figure consistent with the equipment and installation costs on Lines 34 and 301, as Sammons had done on its FCC Form 393.[15] The DPUC maintained that the revised monthly equipment revenue figure which it substituted was a "better estimate" of revenues generated by rates in effect after September 1, 1993. The DPUC points out that Sammons' base rate per channel on Line 110 remained unchanged at $0.638, despite the DPUC's revision of Line 104. Sammons contends that since both its basic tier rate, and its aggregate monthly rate, are below the benchmark rate, it should not be subject to refund liability in any amount.

11. Under the Commission's rules, an operator is not required to change its rates to reflect updated data if the operator's rates are accurately justified by prior data.[16] In this instance, Sammons did not accurately justify its rates, because it did not attach any of the required explanations to FCC Form 393, and it did not offer any justification for its estimate of its technicians' labor hours. The DPUC states that the only evidence available to it in the record was Sammons' actual installation hours, which it submitted for purposes of determining its refund liability. It was, therefore, reasonable for the DPUC to revise Sammons' submission based upon these actual hours. However, the DPUC should have revised Sammons' FCC Form 393 in a consistent and equitable manner. Instead, we find that the DPUC revised Sammons' FCC Form 393 in an unreasonable manner, by employing a mixture of updated data (i.e., installation labor hours, customer equipment percentage) and original data (i.e. capital costs and operating expenses). The DPUC may not use a mixture of updateddata and estimated data. Sammons' HSC, which the DPUC determined by dividing Sammons' estimated costs and expenses by a greater actual number of labor hours, produced an inaccurate, and lower, HSC. The DPUC must, therefore, recalculate Sammons' maximum permitted rate for equipment and installations using Sammons' actual equipment costs for the period of time between September 1, 1993 and May 14, 1994, as well as its actual labor hours for the same period of time, so that the data which is used in these calculations is consistent. In recalculating Sammons' equipment and installation rates, the DPUC may equate Line 104 with Lines 301 and 34, as Sammons did in its FCC Form 393, and as the Commission anticipated would occur in most instances in which an operator restructured its rates prior to September 1, 1993 in accordance with our rules.[17] The DPUC must then modify its local rate order accordingly.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED that the Appeal filed by Sammons Communications of Connecticut, Inc. is REMANDED to the Connecticut Department of Public Utility Control for resolution in accordance with the terms of this Order.

13. IT IS FURTHER ORDERED that, in light of the resolution of its Appeal herein, the Request for Stay filed by Sammons Communications of Connecticut, Inc. IS DISMISSED as moot.

14. This action is taken by the Chief, Cable Services Bureau, pursuant to authority delegated by Section 0.321 of the Commission's rules. 47 C.F.R. §0.321.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

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[14] *See* "Questions and Answers on Completion of FCC Form 393 and Associated Filing Requirements" at 3 (November 10, 1993) ("November 10 Q & A").

[15] In the November 10 Q & A, the Commission stated that, in cases where operators restructured equipment rates as of September 1, 1993 in accordance with the Commission's regulations, it would anticipate that, in most cases, operators will enter in Line 104 the same, or nearly the same, number as on Line 301 (which is the same number as Line 34).

[16] 47 C.F.R. §76.922(b)(9); *Third Order on Reconsideration at* 4349-50.

[17] November 10 Q & A at 3.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Wetherell Cable TV CUID No. IA0350
Marathon, Iowa

Order Denying Jurisdiction

MEMORANDUM OPINION AND ORDER

Adopted: March 13, 1995; Released: March 14, 1995

By the Deputy Chief, Cable Services Bureau:

1. In this Order we dismiss a complaint against the price Wetherell Cable TV ("Wetherell") was charging for its cable programming service ("CPS") tier in Marathon, Iowa, CUID No. IA0350, on the ground that the complaint concerns rates that are outside the jurisdiction and authority of this Commission. As explained below, the Commission regulates rates for CPS only, and then only upon filing of a valid complaint. Our review reveals that the complaint filed against Wetherell, while asserting that it challenges CPS rates, challenges only rates for basic service, not for CPS. The complaint therefore does not trigger the Commission's jurisdiction, and it is accordingly dismissed.

2. The Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act of 1992")[1] distinguishes among basic cable service, premium cable service, and cable programming service.[2] The basic service tier is the minimum package of cable service that a consumer can buy. Except in limited circumstances, the Commission does not have jurisdiction over rates for the basic service tier, and cannot act upon complaints concerning rates for that tier. Premium cable service consists of channels that are paid for individually (per-channel) or per-program. By statute, these channels are not subject to rate regulation.[3] CPS includes all video programming that is not on the basic service tier which the operator offers as a package of channels. Rates for CPS tiers are subject to regulation by the Commission in response to a valid complaint.

3. In this case, Wetherell has informed the Commission that as of September 1, 1993, it only offered one tier of service in Marathon, Iowa, CUID No. IA0350. The channel line-ups and rate cards that Wetherell submitted support this assertion.

4. The complaint under consideration here was filed with the Commission on FCC Form 329. FCC Form 329 is used by subscribers or local franchising authorities wishing to lodge with the Commission a complaint about an operator's CPS rates. The form is entitled "Cable Programming Service Rate Complaint." While the form is designed for use in challenging CPS tier rates, the definition of CPS tier rates is not made clear on the face of the form and it is possible that someone might complete the form without understanding the difference between basic tier rates, premium service rates, and CPS tier rates.[4]

5. We have examined the complaint and Wetherell's response, and we conclude that the complaint challenges only basic rates, not CPS rates. Although the complainant indicates that the rates challenged violate the Commission's rules, the specific information provided by the complainant indicates that only basic rates are at issue. When only basic rates are being challenged, the complaint should properly be brought to the attention of the local franchising authority in the first instance, and not filed with this Commission. If the complaint does in fact challenge CPS rates, the complainant may file a petition for reconsideration providing information adequate to support his challenge.

6. Accordingly, IT IS ORDERED, pursuant to Section 623(a)(2)(A) and (B) of the Communications Act of 1934, as amended, 47 U.S.C. §543(a)(2)(A) and (B), that the complaint filed prior to May 14, 1994, against the cable programming service price charged by Wetherell Cable TV, in Marathon, Iowa, CUID No. IA0350, IS DISMISSED.

7. This action is taken pursuant to delegated authority under Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Deputy Chief, Cable Services Bureau

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[1] Cable Television Consumer Protection and Competition Act, Pub. L. No. 102-385, 106 Stat. 1460 (1992) (Cable Act of 1992).
[2] Cable Act of 1992, Section 602, 47 U.S.C. § 522.
[3] Cable Act of 1992, Section 623(a)(1), 47 U.S.C. § 543(a)(1).
[4] We note that operators have great latitude in determining what channels will be included in the basic tier; once the statutory minimum (broadcast and public educational and governmental access channels) is met, the operator may include as many additional channels in the basic tier as it wants, or it may move additional channels to a higher tier. Thus it is possible that a complainant might not clearly understand which channels are part of which tier.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Century Southwest Cable Television
West Hollywood, California — CUID No. CA0254

Benchmark Filing To Support
Cable Programming Service Prices

MEMORANDUM OPINION AND ORDER

Adopted: March 13, 1995; Released: March 14, 1995

By the Chief, Cable Services Bureau:

I. INTRODUCTION

1. Here we consider complaints about the prices Century Southwest Cable Television ("Century") was charging for its cable programming service ("CPS") tiers in West Hollywood, California, CUID No. CA0254. Century has chosen to attempt to justify its prices through a benchmark showing on FCC Form 393. This Order addresses the reasonableness of Century's prices only through May 14, 1994. At a later time we will issue a separate order addressing the reasonableness of the prices after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS pricesupon the filing of a valid complaint. The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with valid CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

II. PROCEDURAL MATTERS

4. The first complete and timely complaint was served on Century on September 18, 1993.[11] The Commission received the complainton September 24, 1993. In response to the complaint, Century filed an FCC Form 393 on November 16, 1993.

5. On September 1, 1993, Century restructured its service offerings. In addition to its basic service tier and a CPS tier called the Satellite Tier, Century began offering twelve channels on an individual, or a la carte, basis. These a la carte channels could also be purchased collectively as one twelve-channel package (Century Select 12) or in two packages of six channels each (Century Select 6A and 6B). This same type of restructuring was addressed in our letter of inquiry ("LOI") order released on December 22, 1994, in which we resolved the regulatory status of a la carte packages offered by Century in Beverly Hills and Los Angeles, California.[12] In those two communities, Century also created three Century Select packages consisting of twelve or six a la carte channels. In the LOI order, we found that the retiering in Beverly Hills and Los Angeles constituted an evasion of rate regulation. We concluded that Century's a la carte packages must be treated as rate-regulated cable programming service tiers and that the channels composing them must be counted as rate-regulated channels as of September 1, 1993, for purposes of completing the rate justification forms. Based upon this decision, and in response to our December 29, 1994 Public Notice,[13] Century

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[1] The findings in this Order do not in any way prejudge the reasonableness of the prices for CPS service after May 14, 1994 under our new rate regulations. However, to the extent Century has sought to take advantage of the refund deferral period under the *Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking*, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (1994) (*"Second Order on Reconsideration"*), the maximum permitted CPS prices determined herein might also apply from May 15, 1994 until the date on which Century implemented its CPS prices under the new regulations. *See* para. 3, *infra*.

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] *Order* in MM Docket No. 92-266, *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration*, 9 FCC Rcd at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

[11] The complaint was signed September 18, 1993 and states that it was mailed to Century on that date. Century has not complied with 47 C.F.R. § 76.956(a), which requires it to state when service occurred. Under these circumstances, we will consider September 18, 1993 as the service date.

[12] *Century Southwest Cable TV, Beverly Hills and Los Angeles, California*, LOI-93-17, DA 94-1553 (Cab. Serv. Bur., released Dec. 22, 1994).

[13] *Public Notice: Cable Services Bureau Announces Optional Procedures With Respect to Pending Pre-May 15 Benchmark Cases*, DA 94-1556 (Dec. 29, 1994); *see also Public Notice: Cable Services Bureau Announces Extension of Time to File Under Optional Procedures Plan with Respect to Pending Pre-May 15 Benchmark Cases*, DA 95-87 (Jan. 20, 1995).

filed an updated FCC Form 393 for West Hollywood on February 7, 1995, in which it treated the twelve-channel package of a la carte channels as a CPS tier.

6. On January 23, 1995, Century filed an Application for Review which argued that the Commission should reverse the Bureau's LOI decision regarding the treatment of its a la carte packages in Beverly Hills and Los Angeles. Century then filed a motion on January 26, 1995 requesting the Bureau to defer action on the complaints pending against its CPS rates in Beverly Hills and Los Angeles until the Commission rules on the Application for Review. On March 2, 1995, Century submitted a letter to the Bureau asking that its motion to defer action be extended to the complaints pending in West Hollywood since the same a la carte issues on appeal for Beverly Hills and Los Angeles apply to West Hollywood as well.

III. DISCUSSION

7. In its amended benchmark filing of February 7, 1995, Century calculated a maximum permitted rate for the Satellite Tier of $2.96 per month (plus franchise fee) and a maximum permitted rate for the Century Select 12 tier of $5.08 per month (plus franchise fee). Upon review of this filing, we have found no apparent errors that would require a recalculation of these maximum permitted rates. However, Century's actual monthly charge for the Satellite Tier was $3.82 (plus franchise fee), and its actual monthly charge for the Century Select 12 tier was $6.00 (plus franchise fee). Thus, Century failed to demonstrate that the actual charges for these two CPS tiers were at or below the maximum permitted rates.

8. Century did not attempt to justify its monthly price of $4.00 (plus franchise fee) for the Century Select 6A and 6B tiers. Applying the same maximum permitted per-channel rate used in calculating the maximum permitted rates for the aforementioned CPS tiers results in a maximum permitted rate for the Century Select 6A and 6B tiers of $2.54 (plus franchise fee). Therefore, Century's actual monthly charges for these tiers also exceeded the maximum permitted rates.

9. Since the Commission's resolution of the issues pending in Century's Application for Review could require revisions to our analysis, we will stay the effective date of this Order in response to Century's request until the Commission has issued its decision in that proceeding. Because interest charges on any required refunds will continue to accrue during the period of this stay, Century's subscribers in West Hollywood will not be adversely affected.

IV. CONCLUSIONS

10. Upon review of the record herein, we conclude that, for the period of September 24, 1993 to May 14, 1994, Century's showing supports maximum reasonable CPS tier prices of $2.96 per month (plus franchise fee) for the Satellite Tier, $5.08 per month (plus franchise fee) for the Century Select 12 tier, and $2.54 per month (plus franchise fee) for the Century Select 6A and 6B tiers.[14] We further determine that we will order appropriate refunds pursuant to Section 76.957 of the Commission's Rules, 47 C.F.R. § 76.957, in order to reimburse subscribers for the amounts they paid in excess of a reasonable price for the CPS tiers.

11. We further conclude that Century must file an FCC Form 1200 rate filing for the period after May 14, 1994 which reflects the fact that Century's prices during the earlier period were unreasonable.[15] We reserve the right to make further adjustments to Century's prices for the period after May 14, 1994, upon completion of our review of Century's rate justification for that period.

12. We further conclude that Century has submitted in good faith a timely optional supplemental filing in response to our December 29, 1994 Public Notice.[16] As provided in the Public Notice, we will relieve Century of its obligation to obtain advance Commission approval of adjustments to its CPS prices for one year following the effective date of this Order.

13. We further conclude that the effective date of this Order will be stayed until the Commission releases a decision on Century's Application for Review of the Bureau's LOI decision regarding the treatment of Century's a la carte packages in Beverly Hills and Los Angeles.

14. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the September 18, 1993 complaint against the cable programming service prices charged by Century Southwest Cable Television in West Hollywood, California, CUID No. CA0254, and all other complaints relating to the same prices, ARE GRANTED TO THE EXTENT INDICATED HEREIN.

15. IT IS FURTHER ORDERED that the benchmark filing submitted by Century Southwest Cable Television with respect to West Hollywood, California, CUID No. CA0254, for the period of September 24, 1993 to May 14, 1994, justifies maximum prices of $2.96 per month (plus franchise fee) for the Satellite Tier, $5.08 per month (plus franchise fee) for the Century Select 12 tier, and $2.54 per month (plus franchise fee) for the Century Select 6A and 6B tiers.

16. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's Rules, 47 C.F.R. § 76.961, that Century Southwest Cable Television shall refund to subscribers for the period of September 24, 1993[17] to May 14, 1994, that portion of the amounts paid for cable programming service that exceeded $2.96 (plus franchise fee) per month for the Satellite Tier, $5.08 (plus franchise fee) per

[14] These findings are based solely on the representations of Century listed in paragraph 5, *supra*. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

[15] We note that Century has not yet filed a rate justification for its prices in effect after May 14, 1994.

[16] *Public Notice: Cable Services Bureau Announces Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases*, DA 94-1556 (Dec. 29, 1994).

[17] Our jurisdiction to order a refund dates from the earliest date a valid complaint is filed with the Commission. 47 C.F.R. § 76.961(b).

month for the Century Select 12 tier, and $2.54 (plus franchise fee) per month for the Century Select 6A and 6B tiers and were thus unreasonable, plus interest to the date of the refund.

17. IT IS FURTHER ORDERED that Century Southwest Cable Television shall promptly determine the overcharges to CPS subscribers for the stated period, and shall within 30 days of the effective date of this Order file a report with the Chief, Cable Services Bureau, stating the cumulative refund amount so determined (including franchise fees and interest), describing the calculation thereof, and describing its plan to implement the refund within 60 days of Commission approval thereof.

18. IT IS FURTHER ORDERED, pursuant to Section 76.960 of the Commission's Rules, 47 C.F.R. § 76.960, that Century Southwest Cable Television shall not be required to obtain advance Commission approval of adjustments to its CPS prices for one year following the effective date of this Order.

19. IT IS FURTHER ORDERED that Century Southwest Cable Television's request to defer action on the complaints against its cable programming service prices in West Hollywood, California, CUID No. CA0254, is resolved as indicated herein.

20. IT IS FURTHER ORDERED that the effective date of this Order will be stayed until the Commission releases a decision on Century Southwest Cable Television's Application for Review of the Bureau's LOI decision regarding the treatment of its a la carte packages in Beverly Hills and Los Angeles.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

U.S. Cablevision Corporation — CUID Nos. NY0275
East Fishkill, New York — and NY0278
Wappingers Falls, New York

Benchmark Filing To Support
Cable Programming Service Price

MEMORANDUM OPINION AND ORDER

Adopted: March 13, 1995; Released: March 14, 1995

By the Chief, Cable Services Bureau:

I. INTRODUCTION

1. Here we consider complaints about the price U.S. Cablevision Corporation ("U.S. Cablevision") was charging for its cable programming service ("CPS") tier in East Fishkill, New York, CUID No. NY0275, and Wappingers Falls, New York, CUID No. NY0278. U.S. Cablevision has chosen to attempt to justify its price through a benchmark showing on FCC Form 393. This Order addresses the reasonableness of U.S. Cablevision's price only through May 14, 1994. At a later time we will issue a separate order addressing the reasonableness of the price after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a complete and timely complaint. The filing of a complete and timely complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with complete and timely CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

II. PROCEDURAL MATTERS

4. The first complete and timely CPS complaints in East Fishkill, New York, CUID No. NY0275, and Wappingers Falls, New York, CUID No. NY0278, were completed and served on U.S. Cablevision on October 12, 1993 and received by the Commission on October 15, 1993.

5. U.S. Cablevision attempted to justify its CPS price through an FCC Form 393 filed on November 15, 1993. U.S. Cablevision amended its justification on June 23, 1994 in response to a Cable Services Bureau Order citing common deficiencies observed in benchmark filings generally,[11] and on January 24 and 25, 1995, in response to a Cable Services Bureau Public Notice offering operators the opportunity to make optional supplemental filings.[12]

III. DISCUSSION

6. In its amended benchmark filings of January 24 and January 25, 1995, U.S. Cablevision calculated a maximum permitted price for the CPS tier of $9.66 per month. However, U.S. Cablevision's actual price for the CPS tier was $9.69 per month. Thus, U.S. Cablevision has failed to demonstrate that its price for the CPS tier was not unreasonable. Furthermore, upon review of U.S.

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[1] The findings in this Order do not in any way prejudge the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations. However, to the extent U.S. Cablevision has sought to take advantage of the refund deferral period under the *Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking*, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (*"Second Order on Reconsideration"*), the maximum permitted CPS price determined herein might also apply from May 15, 1994 until the date on which U.S. Cablevision implemented its CPS price under the new regulations. *See* para. 3, *infra*. Furthermore, to the extent that the price as of March 31, 1994 is found to be excessive, reductions in U.S. Cablevision's price for the period after May 14, 1994 may be required to reflect the fact that U.S. Cablevision's price during the earlier period, which is used as the starting point to calculate its price for the prospective period, was unreasonable. *See* 47 C.F.R. § 76.922(b)(4)(C).

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992) ("1992 Cable Act"); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] *Order* in MM Docket No. 92-266, *Implementation of Sections of the Cable Consumer Protection and Competition Act of 1992: Rate Regulation*, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration*, 9 FCC Rcd at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

[11] *Cable Operators' Rate Justification Filings*, DA 94-526, 9 FCC Rcd 7752 (Cab. Serv. Bur. 1994).

[12] *Public Notice: Cable Services Bureau Announces Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases*, DA 94-1556 (Dec. 29, 1994); *see also Public Notice: Cable Services Bureau Announces Extension of Time to File Under Optional Procedures Plan with Respect to Pending Pre-May 15 Benchmark Cases*, DA 95-87 (Jan. 20, 1995).

Cablevision's filings, as amended, we have found the following errors that would require a recalculation of U.S. Cablevision's maximum permitted CPS price:

a. In Column G of Schedules A and C of Part III of its FCC Form 393, U.S. Cablevision did not correctly account for its income tax expense. By placing entries in these columns, U.S. Cablevision confirms that it is a tax-paying entity (i.e., a "C" corporation). However, U.S. Cablevision incorrectly calculated its income tax by simply applying the corporate tax rate to its return on investment. The Commission has stated that tax-paying business entities must gross-up their tax entries in Column G of Schedules A and C (i.e., calculate the tax as a percentage of return on investment plus tax).[13] By understating its tax entries in Column G, an operator reduces its effective rate of return on equipment and installations and thereby could increase its CPS price. We therefore recalculate Column G of Schedules A and C (and subsequent steps) using correctly grossed-up tax entries.

b. On its amended benchmark filings of January 24 and 25, 1995, U.S. Cablevision calculated the Inflation Adjustment Factor as of the end of January 1994 using data released by the U.S. Department of Commerce on July 29, 1994. However, U.S. Cablevision cannot permissibly calculate inflation through the end of January 1994. In East Fishkill, New York, CUID No. NY0275, and Wappingers Falls, New York, CUID No. NY0278, U.S. Cablevision was served with rate complaints in October 1993. U.S. Cablevision was therefore required to file a rate justification for these areas no later than November 1993.[14] Since U.S. Cablevision filed its initial FCC Form 393 by that date, the instructions to Form 393 required it to calculate the inflation adjustment only through October 1993.[15] U.S. Cablevision cannot be permitted to claim an additional inflation adjustment simply because it amended its justification at a later date. We therefore must recalculate the Inflation Adjustment Factor on the basis of the most accurate data currently available for the date that U.S. Cablevision timely filed its Form 393.[16] On July 29, 1994, the U.S. Department of Commerce released corrected inflation data including Gross National Product Price Index ("GNP-PI") figures of 122.3 for the third quarter of 1992 and 125.7 for the third quarter of 1993. Using these GNP-PI figures, we calculate 1.030 as the Inflation Adjustment Factor through October 1993, the base date U.S. Cablevision should have used in justifying its rates.

7. Because U.S. Cablevision has failed to demonstrate that its price for the CPS tier was not unreasonable, we will set a price for this tier, incorporating the adjustments discussed above. These adjustments have the cumulative effect of reducing the maximum permitted monthly CPS tier price from $9.66 (as U.S. Cablevision calculated) to $9.60.

IV. CONCLUSIONS

8. Upon review of the record herein, we conclude that U.S. Cablevision's showing supports a maximum reasonable CPS tier price of $9.60 per month (plus franchise fee) for the period October 15, 1993 to May 14, 1994.[17] We further determine that we will order an appropriate refund pursuant to Section 76.957 of the Commission's Rules, 47 C.F.R. § 76.957, in order to reimburse subscribers for the amount they paid in excess of a reasonable price.

9. We further conclude that U.S. Cablevision must reflect in its Form 1200 rate filing for the period after May 14, 1994 the fact that U.S. Cablevision's price during the earlier period was unreasonable.[18] We reserve the right to make further adjustments to U.S. Cablevision's price for the period after May 14, 1994, upon completion of our review of U.S. Cablevision's FCC Form 1200 rate filing.

10. We further conclude that U.S. Cablevision has submitted in good faith a timely optional supplemental filing in response to our December 29, 1994 Public Notice.[19] As provided in the Public Notice, we will relieve U.S. Cablevision of its obligation to obtain advance Commission approval of adjustments to its CPS price for one year following the release of this Order.

11. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the October 12, 1993 complaints against the cable programming service price charged by U.S. Cablevision Corporation in East Fishkill, New York, CUID No. NY0275, and Wappingers Falls, New York, CUID No. NY0278, ARE GRANTED TO THE EXTENT INDICATED HEREIN.

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[13] *First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking*, MM Docket No. 92-266, FCC 93-428, 9 FCC Rcd 1164, 1196 n.92 (1993) ("Our provision to gross-up the return amount for income taxes applies to all tax paying business entities to the extent that they have a state or federal income tax obligation.") *See also Cable Television Rate Regulation Questions and Answers Relating to FCC Form 393*, Question and Answer No. 14 (released July 30, 1993) ("The federal tax expense should be calculated based upon a pre-tax return on investment.")

[14] 47 C.F.R. § 76.956(a) (operator must file a response within 30 days of the date of service of a complaint).

[15] FCC Form 393, page 11, instructions for Line 124 (Inflation Adjustment Factor is calculated using "the number of whole months from September 30, 1992 to the date you will submit this form").

[16] *See* 47 C.F.R. § 76.922(b)(9)(iii) (if a cable operator fails to justify its rates, rates must be adjusted in acordance with the most accurate data available at the time of analysis.)

[17] This finding is based solely on the representations of U.S. Cablevision listed in paragraph 5, *supra*, and the modifications described in paragraph 6, *supra*. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

[18] We reviewed U.S. Cablevision's Form 1200 rate filing and confirmed that U.S. Cablevision calculated its rates for the period after May 14, 1994 using the rate that we find in this Order to be unreasonable.

[19] *Public Notice: Cable Services Bureau Announces Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases*, DA 94-1556 (Dec. 29, 1994).

12. IT IS FURTHER ORDERED that the benchmark filing submitted by U.S. Cablevision Corporation with respect to East Fishkill, New York, CUID No. NY0275, and Wappingers Falls, New York, CUID No. NY0278, for the period of October 15, 1993 to May 14, 1994, justifies a maximum price of $9.60 per month (plus franchise fee) for the cable programming service tier.

13. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's Rules, 47 C.F.R. § 76.961, that U.S. Cablevision Corporation shall refund to subscribers that portion of the amounts paid for cable programming service from October 15, 1993[20] to May 14, 1994, that exceeded $9.60 (plus franchise fee) per month and was thus unreasonable, plus interest to the date of the refund.

14. IT IS FURTHER ORDERED that U.S. Cablevision Corporation shall promptly determine the overcharges to CPS subscribers for the same period, and shall within 30 days of the release of this Order file a report with the Chief, Cable Services Bureau, stating the cumulative refund amount so determined (including franchise fees and interest), describing the calculation thereof, and describing its plan to implement the refund within 60 days of Commission approval thereof.

15. IT IS FURTHER ORDERED, pursuant to Section 76.922(b)(4)(C) of the Commission's Rules, 47 C.F.R. § 76.922(b)(4)(C), that U.S. Cablevision Corporation shall, within 30 days of the release of this Order, revise its Form 1200 filing for East Fishkill, New York, CUID No. NY0275, and Wappingers Falls, New York, CUID No. NY0278, for the period beginning May 15, 1994, to reduce the monthly charge per tier as of March 31, 1994 for Tier 2 (Line A6b) to equal the maximum price for those franchise areas (plus franchise fee).

16. IT IS FURTHER ORDERED that U.S. Cablevision Corporation shall place into effect, within 30 days after submission of the revised Form 1200 filing required above, a CPS tier price for East Fishkill, New York, CUID No. NY0275, and Wappingers Falls, New York, CUID No. NY0278, that reflects the reduction in the CPS rate determined in this Order.

17. IT IS FURTHER ORDERED, pursuant to Section 76.960 of the Commission's Rules, 47 C.F.R. § 76.960, that U.S. Cablevision Corporation shall not be required to obtain advance Commission approval of adjustments to its CPS price for one year following the release of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Service Bureau

[20] Our jurisdiction to order a refund dates from the earliest date a complete and timely complaint is filed with the Commission. *See* 47 C.F.R. § 76.961(b).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Suburban Cable TV Co., Inc.	CUID Nos. PA1319,
West Hempfield, Pennsylvania	PA1700, PA1724,
Spring City, Pennsylvania	and PA2294
Doylestown, Pennsylvania	
Paradise, Pennsylvania	

Benchmark Filing to Support
Cable Programming Service Prices

MEMORANDUM OPINION AND ORDER

Adopted: March 14, 1995; Released: March 15, 1995

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. Here we consider complaints about the prices Suburban Cable TV Co., Inc., (Suburban) was charging for its cable programming service ("CPS") tier in West Hempfield, Pennsylvania, CUID No. PA1319; in Spring City, Pennsylvania, CUID No. 1700; in Doylestown, Pennsylvania, CUID No. 1724; and in Paradise, Pennsylvania, CUID No. 2294. Suburban has chosen to attempt to justify its price through a benchmark showing by filing FCC Form 393s for these communities. This order addresses the reasonableness of Suburban's CPS tier prices for these communities only through May 14, 1994. At a later time we will issue a separate order addressing the reasonableness of the prices after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"),[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a valid complaint. The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its rates through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with valid CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

II. PROCEDURAL MATTERS

4. The first valid CPS complaints in the franchise areas addressed in this Order was completed and served on Suburban in the West Hempfield community on October 18, 1993; in the Spring City community on October 26, 1993; in the Doylestown community on February 22, 1994;[11] and in the Paradise community on October 15, 1993. Suburban initially attempted to justify its CPS prices in West Hempfield, Spring City, Doylestown, and Paradise through FCC Forms 393 filed, respectively, on November 15, 1993, on February 6, 1995, on March 21, 1994, and on February 6, 1995. On February 6, 1995 Suburban filed revised Forms 393 in response to a Cable Services Bureau Notice offering operators the opportunity to make optional supplemental filings.[12]

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[1] The findings in this Order do not in any way prejudge the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations. However, to the extent Suburban has sought to take advantage of the refund deferral period under the *Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking*, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (1994) (*"Second Order on Reconsideration"*), the maximum permitted CPS price determined herein might also apply from May 15, 1994 until the date on which Suburban implemented its CPS price under the new regulations. *See* para. 3, *infra*. Furthermore, to the extent that the price for the period ending May 14, 1994 is found to be excessive, reductions in Suburban's price for the period after May 14, 1994 may be required to reflect the fact that Suburban's price during the earlier period, which is used as the starting point to calculate its price for the prospective period, was unreasonable. *See* 47 C.F.R. § 76.922(b)(4)(C).

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] *Order*, MM Docket No. 92-266, *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, FCC 93-372 , 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration* at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration* at 4189 n.195.

[11] We note that in addition to complaining about the rate charged for CPS, the complainant objecting to the CPS prices in the Doylestown community also objected to Suburban's prices for basic service, addressable converters, and non-addressable converters. However, the local franchising authority, and not the Commission, has jurisdiction in the first instance to regulate rates for the basic tier and equipment used to receive the basic tier. *See* 47 U.S.C. § 543(b). These complaints should therefore be directed to the local franchising authority.

[12] *Public Notice: Cable Services Bureau Announces Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases*, DA 94-1556 (Dec. 29,1994); *see also Public Notice: Cable Services Bureau Announces Extension of Time to File Under Optional Procedures Plan with Respect to Pending Pre-May 15 Benchmark Cases*, DA 95-87 (Jan. 20, 1995).

III. DISCUSSION

5. Suburban asserts that its monthly CPS prices in each of the communities under consideration in this order are justified by its benchmark filings because the prices are less than the maximum permitted charge in each community. Upon review, we have found no apparent errors that would require a recalculation of Suburban's maximum permitted CPS prices.[13]

6. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the complaints referenced herein against the cable programming service price charged by Suburban Cable TV Co., Inc., in West Hempfield, Pennsylvania, CUID No. PA1319, in Spring City, Pennsylvania, CUID No. 1700, in Doylestown, Pennsylvania, CUID No. PA1724, and in Paradise, Pennsylvania, CUID No. PA2294 ARE DENIED TO THE EXTENT INDICATED HEREIN.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Deputy Chief, Cable Services Bureau

[13] This finding is based solely on the representations of the operator. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Bresnan Communications Company Laurium, Michigan Torch Lake, Michigan Hancock, Michigan	CUID Nos. MI0129, MI0133, MI1093

Benchmark Filings To Support
Cable Programming Service Prices

MEMORANDUM OPINION AND ORDER

Adopted: March 14, 1995; Released: March 15, 1995

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. Here we consider complaints about the prices Bresnan Communications Company ("Operator") was charging for its cable programming service ("CPS") tier in Laurium, Michigan, CUID No. MI0129; Torch Lake, Michigan, CUID No. MI0133; and Hancock, Michigan, CUID No. MI1093. Operator has attempted to justify its prices through separate benchmark showings on FCC Form 393. This Order addresses the reasonableness of Operator's prices only through May 14, 1994. At a later time we will issue a separate order addressing the reasonableness of the prices after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a valid complaint. The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, Operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with valid CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

II. PROCEDURAL MATTERS

4. The first valid CPS complaints were completed and served on Operator on November 2, 1993 for CUID Nos. MI0129 and MI1093, and on November 9, 1993 for CUID No. MI0133. The Commission received the complaints on November 8, 1993 for MI0129 and MI1093, and on November 9, 1993 for CUID No. MI0133.

5. Operator attempted to justify its CPS prices through separate FCC Forms 393 filed on November 29, 1993 for CUID Nos. MI0129 and MI0133, and on November 15, 1993 for CUID No. MI1093. Operator amended its justifications for CUID Nos. MI0129 and MI1093 on February 7, 1995, in response to a Cable Services Bureau Public Notice offering operators the opportunity to make optional supplemental filings.[11]

III. DISCUSSION

6. Operator asserts that its monthly CPS tier prices of $11.03 in CUID No. MI0129, $10.83 in CUID No. MI0133, and $10.82 in CUID No. MI1093 are justified by its benchmark filings because its prices are less than the maximum permitted charges calculated in the filings. Upon review of Operator's filings, we have found the following errors that require a recalculation of Operator's maximum permitted CPS prices:

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[1] The findings in this Order do not in any way prejudge the reasonableness of the prices for CPS service after May 14, 1994 under our new rate regulations. However, to the extent Operator has sought to take advantage of the refund deferral period under the *Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking*, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (1994) (*"Second Order on Reconsideration"*), the maximum permitted CPS prices determined herein might also apply from May 15, 1994 until the date on which the operator implemented its CPS prices under the new regulations. *See* para. 3, *infra*. Further, to the extent that the prices as of March 31, 1994 are found to be excessive, a reduction in the operator's prices for the period after May 14, 1994 may be required to reflect the fact that the operator's prices during the earlier period, which are used as the starting point to calculate its prices for the prospective period, were unreasonable. 47 C.F.R. §76.922(b)(4)(c).

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] *Order* in MM Docket No. 92-266, *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration*, 9 FCC Rcd at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

[11] *Public Notice: Cable Services Bureau Announces Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases*, DA 94-1556 (Dec. 29, 1994); *see also Public Notice: Cable Services Bureau Announces Extension of Time to File Under Optional Procedures Plan with Respect to Pending Pre-May 15 Benchmark Cases*, DA 95-87 (Jan. 20, 1995).

a. In Line 2 of Step A of Part III of its FCC Form 393, Operator entered a customer equipment and installation percentage of 14%, yet did not correctly calculate this percentage amount on Line 3. We therefore adjusted Line 3 to equal 14% of the amount of Line 1, and adjusted subsequent steps accordingly.

b. In Columns A, B, C and D of Worksheet 1 of Part II of its FCC Form 393, Operator completed information for four separate tiers although its rate cards showed only two tier offerings consisting of basic and CPS programming with related charges. Accordingly, Worksheet 1 was adjusted to reflect only the two tiers and to include tier channels and tier charge information consistent with the rate cards.

c. Operator's Form 393, Worksheet 1, Line 104 entry does not represent its current monthly equipment revenue as of the initial date of regulation. Since Operator restructured its rates, including its equipment rates, on September 1, 1993, in an attempt to comply with the Commission's regulations, the monthly equipment cost figure it entered on Line 34 of Step G of Part III should have been close or identical to its Line 104 entry.[12] However, Operator's entry on Line 104 differed substantially from its entry on Line 34. We therefore adjusted Line 104 to equal the amount entered on Line 34, as adjusted pursuant to paragraph 6a, *supra*.

7. Because of these errors, we conclude that Operator has failed to demonstrate that its prices for the CPS tier were not unreasonable. We will therefore set prices for this tier, incorporating the adjustments discussed above. In doing so, we must also recalculate the Inflation Adjustment Factor in Form 393, Part II, Worksheet 1, on the basis of the most accurate data currently available for the date for which Operator filed.[13] On its Forms 393, Operator entered 13 months on Line 124, indicating that it calculated the Inflation Adjustment Factor through October 1993. On July 29, 1994, the U.S. Department of Commerce released corrected inflation data including Gross National Product Price Index (GNP-PI) figures of 122.3 for the third quarter of 1992 and 125.7 for the third quarter of 1993. Using these GNP-PI figures, we calculate an Inflation Adjustment Factor through October 1993, the base date Operator used in justifying its rates, of 1.030.

8. These adjustments have the cumulative effect of reducing the maximum permitted monthly CPS tier price from $11.18, $11.02, and $11.09 per month (as Operator calculated) to $11.02, $10.82, and $10.78 per month for Laurium, Michigan, CUID No. MI0129; Torch Lake, Michigan, CUID No. MI0133; and Hancock, Michigan, CUID No. MI1093, respectively.

IV. CONCLUSIONS

9. Upon review of the record herein, we conclude that Operator's showing supports maximum reasonable CPS tier prices of $11.02, $10.82, and $10.78 (plus franchise fee) per month for Laurium, Michigan, CUID No. MI0129; Torch Lake, Michigan, CUID No. MI0133; and Hancock, Michigan, CUID No. MI1093, respectively, for the period November 29, 1993 to May 14, 1994 for CUID Nos. MI0129 and MI0133 and for the period November 15, 1993 to May 14, 1994 for CUID No. MI1093.[14] However, we further determine that the refund at issue is such a de minimis amount that it would not serve the public interest to order a refund.

10. We further conclude that Operator must reflect in its FCC Form 1200 rate filings for the period after May 14, 1994 the fact that Operator's prices during the earlier period were unreasonable.[15] We reserve the right to make further adjustments to Operator's prices for the period after May 14, 1994 upon completion of our review of Operator's FCC Form 1200 rate filings.

11. We further conclude that Operator has submitted in good faith timely optional supplemental filings for CUID Nos. MI0129 and MI1093 in response to our December 29, 1994 Public Notice.[16] As provided in the Public Notice, we will relieve Operator of its obligation to obtain advance Commission approval of adjustments to its CPS prices for one year following the release of this Order for CUID Nos. MI0129 and MI1093.

12. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the complaints against the cable programming service price charged by Operator in Laurium, Michigan, CUID No. MI0129; Torch Lake, Michigan, CUID No. MI0133; and Hancock, Michigan, CUID No. MI1093, ARE GRANTED TO THE EXTENT INDICATED HEREIN AND DENIED TO THE EXTENT INDICATED HEREIN.

13. IT IS FURTHER ORDERED that the benchmark filings submitted by Operator with respect to Laurium, Michigan, CUID No. MI0129 and Hancock, Michigan, CUID No. MI1093, for the period of November 8, 1993 to May 14, 1994, justify maximum prices of $11.02 and $10.78, respectively, per month (plus franchise fee) for the cable programming service tier.

14. IT IS FURTHER ORDERED that the benchmark filing submitted by Operator with respect to Torch Lake, Michigan, CUID No. MI0133, for the period of November

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[12] *See Questions and Answers on Completion of FCC Form 393 and Associated Filing Requirements*, Question and Answer No. 7 (released Nov. 10, 1993) ("Where operators have restructured equipment rates as of September 1, 1993 in accordance with our regulations . . . operators will enter on Line 104 the same, or nearly the same, number as on Line 301.").

[13] *See* 47 C.F.R. § 76.922(b)(9)(iii)(if a cable operator fails to justify its rates, rates must be adjusted in accordance with the most accurate data available at the time of analysis).

[14] These findings are based solely on the representations of Operator listed in paragraph 5, *supra*, and the adjustments described in paragraphs 6 and 7, *supra*. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

[15] We reviewed Operator's FCC Form 1200 rate filing and confirmed that Operator calculated its rates for the period after May 14, 1994 using the rate that we find in this Order to be unreasonable.

[16] *Public Notice: Cable Services Bureau Announces Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases*, DA 94-1556 (Dec. 29, 1994).

9, 1993 to May 14, 1994, justifies a maximum price of $10.82 per month (plus franchise fee) for the cable programming service tier.

15. IT IS FURTHER ORDERED, pursuant to Section 76.922(b)(4)(C) of the Commission's Rules, 47 C.F.R. § 76.922(b)(4)(C), that Operator shall, within 30 days of the release of this Order, revise its Form 1200 filings with respect to Laurium, Michigan, CUID No. MI0129; Torch Lake, Michigan, CUID No. MI0133; and Hancock, Michigan, CUID No. MI1093, for the period beginning May 15, 1994, to reduce the monthly charge per tier as of March 31, 1994 for Tier 2 (Line A6b) to equal the maximum permitted rate (plus franchise fee) for each franchise area.

16. IT IS FURTHER ORDERED that Operator shall place into effect, within 30 days after its submission of the revised Form 1200 filings required above, CPS tier prices that reflect the reductions in the CPS rate determined in this Order.

17. IT IS FURTHER ORDERED, pursuant to Section 76.960 of the Commission's rules, 47 C.F.R. § 76.960, that Operator shall not be required to obtain advance Commission approval of adjustments to its CPS prices for CUID Nos. MI0129 and MI1093 for one year following the release of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Deputy Chief, Cable Services Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Century Southwest Cable Television III
Marina Del Rey, California

CUID No. CA0550

Benchmark Filing To Support
Cable Programming Service Prices

MEMORANDUM OPINION AND ORDER

Adopted: March 17, 1995; Released: March 20, 1995

By the Chief, Cable Services Bureau:

I. INTRODUCTION

1. Here we consider a complaint about the prices Century Southwest Cable Television III ("Century") was charging for its cable programming service ("CPS") tiers in Marina Del Rey, California, CUID No. CA0550. Century has chosen to attempt to justify its prices through a benchmark showing on FCC Form 393. This Order addresses the reasonableness of Century's prices only through May 14, 1994. At a later time we will issue a separate order addressing the reasonableness of the prices after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a valid complaint. The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with valid CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

II. PROCEDURAL MATTERS

4. The complaint was served on Century on October 8, 1993.[11] The Commission received the complaint on October 12, 1993.

5. Century states that it restructured its service offerings on September 1, 1993. In addition to its basic service tier and a CPS tier called the Satellite Tier, Century began offering twelve channels on an individual, or a la carte, basis. These a la carte channels could also be purchased collectively as one twelve-channel package (Century Select 12) or in two packages of six channels each (Century Select 6A and 6B). This same type of restructuring was addressed in our letter of inquiry ("LOI") order released on December 22, 1994, in which we resolved the regulatory status of a la carte packages offered by Century in Beverly Hills and Los Angeles, California.[12] In those two communities, Century also created three Century Select packages consisting of twelve or six a la carte channels. In the LOI order, we found that the retiering in Beverly Hills and Los Angeles constituted an evasion of rate regulation. We concluded that Century's a la carte packages must be treated as rate-regulated cable programming service tiers and that the channels composing them must be counted as rate-regulated channels as of September 1, 1993, for purposes of completing the rate justification forms. Based upon this decision, and in response to our December 29, 1994 Public Notice,[13] Century filed an FCC Form 393 for Marina Del

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[1] The findings in this Order do not in any way prejudge the reasonableness of the prices for CPS service after May 14, 1994 under our new rate regulations. However, to the extent Century has sought to take advantage of the refund deferral period under the *Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking*, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (1994) (*"Second Order on Reconsideration"*), the maximum permitted CPS prices determined herein might also apply from May 15, 1994 until the date on which Century implemented its CPS prices under the new regulations. *See* para. 3, *infra*.

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] *Order* in MM Docket No. 92-266, *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration*, 9 FCC Rcd at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

[11] The complaint was signed October 8, 1993 and states that it was mailed to Century on that date. Century has not complied with 47 C.F.R. § 76.956(a), which requires it to state when service occurred. Under these circumstances, we will consider October 8, 1993 as the service date.

[12] *Century Southwest Cable TV, Beverly Hills and Los Angeles, California*, LOI-93-17, DA 94-1553 (Cab. Serv. Bur., released Dec. 22, 1994).

[13] *Public Notice: Cable Services Bureau Announces Optional Procedures With Respect to Pending Pre-May 15 Benchmark Cases*, DA 94-1556 (Dec. 29, 1994); *see also Public Notice: Cable*

Rey for the first time on February 2, 1995, in which it treated the twelve-channel package of a la carte channels as a CPS tier.

6. On January 23, 1995, Century filed an Application for Review which argued that the Commission should reverse the Bureau's LOI decision regarding the treatment of its a la carte packages in Beverly Hills and Los Angeles. Century then filed a motion on January 26, 1995 requesting the Bureau to defer action on the complaints pending against its CPS rates in Beverly Hills and Los Angeles until the Commission rules on the Application for Review. On March 2, 1995, Century submitted a letter to the Bureau asking that its motion to defer action be extended to the complaint pending in Marina Del Rey since the same a la carte issues on appeal for Beverly Hills and Los Angeles apply to Marina Del Rey as well.

III. DISCUSSION

7. In its benchmark filing of February 2, 1995, Century calculated a maximum permitted rate for the Satellite Tier of $3.30 per month (plus franchise fee) and a maximum permitted rate for the Century Select 12 tier of $5.66 per month (plus franchise fee). Century did not, however, attempt to justify its monthly price of $4.00 for the Century Select 6A and 6B tiers. Upon review, we have determined that Century has miscalculated its maximum permitted per-channel rate, and it is therefore appropriate to make the following adjustments to Century's calculations in Form 393:

a. According to a supplemental schedule attached to its Form 393, Century's benchmark calculation for its regulated offerings as of September 1, 1993 (Form 393, Part II, Worksheet 1, Line 121) was based upon 60 regulated channels and 44 satellite channels. A review of Century's channel line-up card, effective September 1, 1993, verified a total of 60 regulated channels. However, Century did not identify on the channel line-up card which of the regulated channels were delivered by satellite. Based upon our count, we found that there were 34 satellite channels instead of 44. This adjustment reduces the benchmark channel rate entered on Line 121 of Worksheet 1.

b. Century's benchmark calculation for its regulated offerings as of September 30, 1992 (Form 393, Part II, Worksheet 2, Line 220) was based upon 46 regulated channels and 34 satellite channels. According to the channel line-up card, effective September 30, 1992, C-Span II was shown on both channels 15 and 52. Since the same programming service was shown on both channels, Century could not charge subscribers for these channels as separate units of cable service.[14] Similarly, channel 16 was a split channel carrying QVC and Bravo programming. Both QVC and Bravo were also carried separately on channels 37 and 46, respectively. Therefore, channel 16 appears to have duplicated part of the same services provided on other channels full time and should not be counted as an additional channel. Accordingly, we reduced the total number of rate-regulated channels from 46 to 44.

c. In addition, the September 30, 1992 channel line-up card does not verify Century's count of 34 satellite channels. Although identified as satellite channels on the channel line-up card, channels 3 (Public Access) and 10 (KWHY Los Angeles/Local Origination) are local broadcast or local origination channels. These types of channels are not included in the definition of a satellite channel provided in the Form 393 instructions for Part II, Worksheet 1, Line 121.[15] Furthermore, the duplicate channels identified in paragraph 7b, *supra*, should not have been counted as two satellite channels. We therefore reduced the number of satellite channels from 34 to 30. This adjustment increases the benchmark channel rate entered on Line 220 of Worksheet 2.

d. Century miscalculated its Inflation Adjustment Factor (Form 393, Part II, Worksheet 1, Line 127). Using the Gross National Product-Price Index figures published by the Department of Commerce on July 29, 1994, we calculate 1.030 as the Inflation Adjustment Factor through October 31, 1993, the latest date through which Century could have claimed inflation if it had filed Form 393 in a timely fashion.[16]

8. These adjustments have the cumulative effect of decreasing the maximum permitted monthly price for the Satellite Tier to $3.28 per month (plus franchise fee). Century's actual monthly charge for the Satellite Tier was $3.82 (plus franchise fee). These same adjustments result in a maximum permitted rate for the Century Select 12 tier of $5.62 per month (plus franchise fee). Century's actual monthly charge for the Century Select 12 tier was $6.00 (plus franchise fee). In addition, we find that the maximum permitted rate for the Century Select 6A and 6B tiers was $2.81 per month (plus franchise fee). Century's actual monthly charge for the Century Select 6A and 6B tiers was $4.00 (plus franchise fee). Thus, Century has failed to demonstrate that its actual charges for these four tiers were at or below the maximum permitted rates.

Services Bureau Announces Extension of Time to File Under Optional Procedures Plan with Respect to Pending Pre-May 15 Benchmark Cases, DA 95-87 (Jan. 20, 1995).

[14] *See Cox Cable Hampton Roads, Inc., Virginia Beach, Virginia*, CUID No. VA0166, DA 94-1288 (Cab. Serv. Bur., released Nov. 18, 1994).

[15] The instructions state:

> For purposes of using the benchmark tables, "satellite-delivered signal" is any cable program service or "superstation" delivered on a communications satellite that is not a premium service (pay channel or pay-per-view channel). If a cable system picks up a satellite channel via a microwave or fiber optic feed, the channel remains a satellite channel if it is available by satellite unless it could be picked up directly over-the-air in the cable community.

[16] *See* Instructions to FCC Form 393, page 11, Line 124 (inflation adjustment is calculated using "the number of whole months from September 30, 1992 to the date you will submit this form"); 47 C.F.R. § 76.956(a) (operator must file a rate justification within 30 days of service of a complaint that is not returned by the Commission).

9. Since the Commission's resolution of the issues pending in Century's Application for Review of the Bureau's LOI decision regarding Beverly Hills and Los Angeles could require revisions to our analysis, we will stay the effective date of this Order in response to Century's request until the Commission has issued its decision in that proceeding. Because interest charges on any required refunds will continue to accrue during the period of this stay, Century's subscribers in Marina Del Rey will not be adversely affected.

IV. CONCLUSIONS

10. Upon review of the record herein, we conclude that, for the period of October 12, 1993 to May 14, 1994, Century's showing supports maximum reasonable CPS tier prices of $3.28 per month (plus franchise fee) for the Satellite Tier, $5.62 per month (plus franchise fee) for the Century Select 12 tier, and $2.81 per month (plus franchise fee) for the Century Select 6A and 6B tiers.[17] We further determine that we will order appropriate refunds pursuant to Section 76.957 of the Commission's Rules, 47 C.F.R. § 76.957, in order to reimburse subscribers for the amounts they paid in excess of a reasonable price for the CPS tiers.

11. We further conclude that Century must file an FCC Form 1200 rate filing for the period after May 14, 1994 which reflects the fact that Century's prices as of March 31, 1994 were unreasonable.[18] We reserve the right to make further adjustments to Century's prices for the period after May 14, 1994, upon completion of our review of Century's rate justification for that period.

12. We further conclude that Century has submitted in good faith a timely optional supplemental filing in response to our December 29, 1994 Public Notice.[19] As provided in the Public Notice, we will relieve Century of its obligation to obtain advance Commission approval of adjustments to its CPS prices for one year following the effective date of this Order.

13. We further conclude that the effective date of this Order will be stayed until the Commission releases a decision on Century's Application for Review of the Bureau's LOI decision regarding the treatment of Century's a la carte packages in Beverly Hills and Los Angeles.

14. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the October 8, 1993 complaint against the cable programming service prices charged by Century Southwest Cable Television III in Marina Del Rey, California, CUID No. CA0550, IS GRANTED TO THE EXTENT INDICATED HEREIN.

15. IT IS FURTHER ORDERED that the benchmark filing submitted by Century Southwest Cable Television III with respect to Marina Del Rey, California, CUID No. CA0550, for the period of October 12, 1993 to May 14, 1994, justifies maximum prices of $3.28 per month (plus franchise fee) for the Satellite Tier, $5.62 per month (plus franchise fee) for the Century Select 12 tier, and $2.81 per month (plus franchise fee) for the Century Select 6A and 6B tiers.

16. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's Rules, 47 C.F.R. § 76.961, that Century Southwest Cable Television III shall refund to subscribers for the period of October 12, 1993[20] to May 14, 1994, that portion of the amounts paid for cable programming service that exceeded $3.28 per month (plus franchise fee) for the Satellite Tier, $5.62 per month (plus franchise fee) for the Century Select 12 tier, and $2.81 per month (plus franchise fee) for the Century Select 6A and 6B tiers and were thus unreasonable, plus interest to the date of the refund.

17. IT IS FURTHER ORDERED that Century Southwest Cable Television III shall promptly determine the overcharges to CPS subscribers for the stated period, and shall within 30 days of the effective date of this Order file a report with the Chief, Cable Services Bureau, stating the cumulative refund amount so determined (including franchise fees and interest), describing the calculation thereof, and describing its plan to implement the refund within 60 days of Commission approval thereof.

18. IT IS FURTHER ORDERED, pursuant to Section 76.960 of the Commission's Rules, 47 C.F.R. § 76.960, that Century Southwest Cable Television III shall not be required to obtain advance Commission approval of adjustments to its CPS prices for one year following the effective date of this Order.

19. IT IS FURTHER ORDERED that Century's request to defer action on the complaint against its cable programming service prices in Marina Del Rey, California, CUID No. CA0550, is resolved as indicated herein.

20. IT IS FURTHER ORDERED that the effective date of this Order is stayed until the Commission releases a decision on Century's Application for Review of the Bureau's LOI decision regarding the treatment of its a la carte packages in Beverly Hills and Los Angeles.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

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[17] These findings are based solely on the representations of Century listed in paragraph 5, *supra*, and the modifications described in paragraph 7, *supra*. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

[18] We note that Century has not yet filed a rate justification for its prices in effect after May 14, 1994.

[19] *Public Notice: Cable Services Bureau Announces Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases*, DA 94-1556 (Dec. 29, 1994).

[20] Our jurisdiction to order a refund dates from the earliest date a valid complaint is filed with the Commission. 47 C.F.R. § 76.961(b).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Sammons Communications, Inc. CUID Nos. NJ0120, NJ0121, NJ0159

Benchmark Filing to Justify Cable Programming Service Rates

MEMORANDUM OPINION AND ORDER

Adopted: March 17, 1995; Released: March 20, 1995

By the Deputy Chief, Cable Services Bureau:

1. Here we consider complaints about the price Sammons Communications, Inc. ("Sammons") was charging for its cable programming service ("CPS") tier in the following communities in New Jersey: Parsippany-Troy Hills, CUID No. NJ0120; Mountain Lakes, CUID No. NJ0121; and Denville, CUID No. NJ0159. Sammons has chosen to attempt to justify its price through benchmark showings on FCC Form 393. This Order addresses the reasonableness of Sammons' price only through May 14, 1994. At a later time we will issue a separate order addressing the reasonableness of the price after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a complete and timely complaint. The filing of a complete and timely complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with complete and timely CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

4. Sammons asserts that its monthly CPS price is justified by its benchmark filings because this price is less than the maximum permitted charge. Upon review, we have found no apparent errors that would require a recalculation of Sammons' maximum permitted CPS price.[11]

5. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the complaints referenced herein against the cable programming service price charged by Sammons Communications, Inc. in Parsippany-Troy Hills, New Jersey, CUID No. NJ0120; Mountain Lakes, New Jersey, CUID No. NJ0121; and Denville, New Jersey, CUID No. NJ0159, ARE DENIED TO THE EXTENT INDICATED HEREIN.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Deputy Chief, Cable Services Bureau

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[1] The findings in this Order do not in any way prejudge the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations. However, to the extent the operator has sought to take advantage of the refund deferral period under the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (*"Second Order on Reconsideration"*), the maximum permitted CPS price determined herein might also apply from May 15, 1994 until the date on which the operator implemented its CPS price under the new regulations. *See* para. 3, *infra*.

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992) ("1992 Cable Act"); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] Order in MM Docket No. 92-266, Implementation of Sections of the Cable Consumer Protection and Competition Act of 1992: Rate Regulation, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration*, 9 FCC Rcd at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

[11] This finding is based solely on the representations of the operator. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Sammons Communications, Inc. CUID No. NJ0270
Randolph, New Jersey

Benchmark Filing to Support
Cable Programming Service Price

MEMORANDUM OPINION AND ORDER

Adopted: March 17, 1995; Released: March 20, 1995

By the Deputy Chief, Cable Services Bureau:

1. Here we consider a complaint about the price Sammons Communications, Inc. ("Sammons") was charging for its cable programming service ("CPS") tier in Randolph, New Jersey, CUID No. NJ0270. Sammons has chosen to attempt to justify its price through a benchmark showing on FCC Form 393. This Order addresses the reasonableness of Sammons' price only through May 14, 1994. At a later time we will issue a separate order addressing the reasonableness of the price after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a complete and timely complaint. The filing of a complete and timely complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with complete and timely CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

4. Sammons calculated a maximum permitted rate for the CPS tier of $10.43 per month (plus franchise fee). Upon review of Sammons' filing, we have found no apparent errors that would require a recalculation of this maximum permitted rate.[11] However, Sammons' actual monthly charge for its CPS tier was $10.47 (plus franchise fee). Thus, Sammons failed to demonstrate that the actual charge for its CPS tier was at or below the maximum permitted rate. However, the overcharge is such a *de minimis* amount that it would not serve the public interest to order a refund.

5. Nonetheless, Sammons must reflect in its FCC Form 1200 rate filing for the period after May 14, 1994 the fact that its prices during the earlier period were unreasonable. We reserve the right to make further adjustments to Sammons' prices for the period after May 14, 1994, upon completion of our review of its FCC Form 1200 rate filing.

6. Sammons has submitted in good faith a timely optional supplemental filing in response to our December 29, 1994 Public Notice.[12] As provided in the Public Notice, we will relieve Sammons of its obligation to obtain advance Commission approval of adjustments to its CPS price for one year following the release of this Order.

7. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the complaint against the cable programming service price charged by Sammons Communications, Inc. in Randolph, New Jersey, CUID No. NJ0270, IS GRANTED TO THE EXTENT INDICATED HEREIN.

8. IT IS FURTHER ORDERED that the benchmark filing submitted by Sammons Communications, Inc. with respect to Randolph, New Jersey, CUID No. NJ0270, justifies a maximum price of $10.43 per month (plus franchise fee) for Sammons Communications, Inc.'s cable programming service tier.

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[1] The findings in this Order do not in any way prejudge the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations. However, to the extent the operator has sought to take advantage of the refund deferral period under the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (*"Second Order on Reconsideration"*), the maximum permitted CPS price determined herein might also apply from May 15, 1994 until the date on which the operator implemented its CPS price under the new regulations. *See* para. 3, *infra*.

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992) ("1992 Cable Act"); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] Order in MM Docket No. 92-266, Implementation of Sections of the Cable Consumer Protection and Competition Act of 1992: Rate Regulation, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration*, 9 FCC Rcd at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

[11] This finding is based solely on the representations of Sammons in its filing. Should information come to our attention that these representations were inaccurate in any material way, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

[12] *Public Notice: Cable Services Bureau Announces Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases*, DA 94-1556 (Dec. 29, 1994).

9. IT IS FURTHER ORDERED, pursuant to Section 76.922(b)(4)(c) of the Commission's Rules, 47 C.F.R. § 76.922(b)(4)(c), that Sammons Communications, Inc. shall, within 30 days after the release of this Order, revise its Form 1200 filing with respect to Randolph, New Jersey, CUID No. NJ0270, for the period beginning May 15, 1994, to reduce the monthly charge per tier as of March 31, 1994 for Tier 2 (Line A6b) to equal the maximum permitted rate (plus franchise fee).

10. IT IS FURTHER ORDERED that Sammons Communications, Inc. shall place into effect, within 30 days after its submission of the revised Form 1200 filing required above, a CPS tier price that reflects the reduction in the CPS rate determined in this Order.

11. IT IS FURTHER ORDERED, pursuant to Section 76.960 of the Commission's Rules, 47 C.F.R. § 76.960, that Sammons Communications, Inc. shall not be required to obtain advance Commission approval of adjustments to its CPS price for one year following the release of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Deputy Chief, Cable Services Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In re:

Application of CSR- 4470-T
W.K. Communications, Inc.

Waiver of Section 76.502 of the
Commission's Rules

MEMORANDUM OPINION AND ORDER

Adopted: March 20 , 1995; Released: March 22, 1995

By the Cable Services Bureau:

1. On February 14, 1995, W.K. Communications, Inc. ("WKC") filed a request for waiver of 47 C.F.R. §76.502(a), the Commission's anti-trafficking rule, for certain cable systems in Kansas, Missouri, and Arkansas.[1] WKC seeks this waiver to assure that the consummation of a merger transaction involving cable systems that WKC has controlled for less than three years will not violate the anti-trafficking rule. The waiver request is unopposed.

2. Section 76.502 of the Commission's Rules implements Section 617 of the Communications Act, as amended, which, with certain exceptions, restricts the ability of a cable operator to sell or otherwise transfer ownership in a cable system within a 36 month period following either the acquisition or initial construction of the system.[2] Both the statutory provision and the rule provide, however, that in the case of a sale of multiple systems, subsequent transfers of one or more such systems to one or more third parties will be considered part of the initial transaction for purposes of the anti-trafficking provision.[3] In addition, the Commission has broad discretion to grant waivers of the holding requirement.[4]

3. The three-year holding requirement rule, and its underlying statutory provision, are aimed at restricting transactions and other transfers that are likely to adversely affect cable rates or service in the local franchise area, and are not intended to inhibit investment in the cable industry or delay or disrupt legitimate transactions.[5] Recently, the Commission stated that unless a transaction raises serious concerns on its face or any objections filed provide other public interest bases for concern, requests for waiver of the three-year holding requirement will generally be looked on favorably.[6]

4. The 1992 Cable Act expressly exempts from the restriction: "(1) any transfer of ownership interest in any cable system which is not subject to Federal income tax liability; (2) any sale required by operation of any law or any act of any Federal agency, any State or political subdivision thereof, or any franchising authority; and (3) any sale assignment, or transfer, to one or more purchasers, assignees, or transferees controlled by, controlling, or under common control with, the seller, assignor, or transferor.[7] The Commission has interpreted the exemptions to apply to changes of control that are the result of tax exempt transactions, involuntary transfers and transfers involving municipally owned cable systems, and *pro forma* transfers or assignments.[8]

5. WKC states that on September 19, 1994, it entered into a merger agreement whereby WT Acquisition Merger Corporation will be merged with and into WKC. WKC will be the surviving entity and will be a subsidiary of WT Acquisition Corporation ("WTA"). The parties have filed all relevant FCC applications for transfer of control of business radio and CARS licenses, and have received all appropriate franchising authority transfer approvals. According to WKC, the merger agreement requires consummation of the transaction by April 15, 1995.[9]

6. The merger involves 30,513 subscribers and 17 headends. WKC is concerned with three headends located in Fairgrove, Seneca, and Noel, Missouri, each of which serves fewer than 1,000 subscribers and the three headends in Maryville, Boonville, and Neosho, Missouri each of which have more than 1,000 subscribers and have been held for less than three years. The subscriber total for the latter three systems is 9,119 subscribers or 29.89% of the subscribers involved in the merger. Petitioner notes that the Maryville system, with 4,157 subscribers, is due to reach its three year holding period in May 1995, just after

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[1] The cable systems subject to the merger transaction, but held for 36 months or more, are as follows: Ozark, MO/Nixa, MO; Fort Scott, KS; Paola, KS/Osawatomie, KS; St. Martins, MO; Spring Hill, KS; Frontenac, KS; Girard, KS; Pleasanton, KS; Louisburg, KS; LaCygne, KS; and Drexel, MO. The cable systems subject to the merger transaction, but held for less than 36 months, include: Maryville, MO; Boonville, MO; Neosho, MO; Noel, MO; Seneca, MO; and Fairgrove, MO.

[2] 47 C.F.R. § 76.502; Section 617 of the Communications Act of 1934, as amended, 47 U.S.C. § 537.

[3] 47 U.S.C. § 537(b); 47 C.F.R. § 76.502(e)(1994).

[4] 47 U.S.C. § 537(d); *see also Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992, (Horizontal and Vertical Ownership Limits, Cross-Ownership Limitations and Anti-Trafficking Provisions), First Report and Order*, ¶ 78, 8 FCC Rcd 6828, 6839 (1993), *recon. granted in part and denied in part, Memorandum Opinion and Order on Reconsideration of the First Report and Order*, 10 FCC Rcd _____, FCC 95-21, released January 30, 1995 (MM Docket No. 92-264); 47 C.F.R. § 76.502(g).

[5] *See Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992, (Horizontal and Vertical Ownership Limits, Cross-Ownership Limitations and Anti-Trafficking Provisions), First Report and Order*, ¶ ¶ 11, 21 & 36, 8 FCC Rcd at 6830-31, 6833; 47 U.S.C. § 537.

[6] *Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992, (Horizontal and Vertical Ownership Limits, Cross-Ownership Limitations and Anti-Trafficking Provisions), Memorandum Opinion and Order on Reconsideration of the First Report and Order*, ¶ 79, 10 FCC Rcd _____, FCC 95-21, released January 30, 1995 (MM Docket No. 92-264).

[7] 47 U.S.C. §537(c).

[8] *See Report and Order*, 8 FCC Rcd at 6837-39.

[9] WKC has filed an application for a "tax certificate" which, if granted, would result in the transaction being tax free and hence exempt from the three- year holding period. In order to close the transaction and in the absence of a decision on the tax certificate, the captioned waiver has been filed.

the proposed consummation date. WKC asks the Commission to waive the anti-trafficking rule for those systems with fewer than 1,000 subscribers under the blanket exemption for small systems. As for the Maryville, Boonville, and Neosho systems, the operator requests that the Commission waive the rule because over two-thirds of the remaining MSO's subscribers have been held by WKC for over three years. Alternatively, WKC asks that the Commission apply its waiver standard liberally in case the "blanket waiver" small systems are included in the less-than-three-year subscriber count.

7. We will grant a waiver for the three systems serving fewer than 1,000 subscribers, pursuant to 47 C.F.R. §502(g)(2). We will also grant WKC's waiver request with respect to the three cable systems in Maryville, Boonville and Neosho. In ascertaining the subscriber count, we believe it is appropriate to include systems with fewer than 1,000 subscribers in the calculation of what percentage of total subscribers has been held for over three years. Applying this standard reveals that over two-thirds of the relevant subscribers have been held for over three years. We also note that the Maryville system will reach its three-year holding threshold just after the proposed merger consummation. Finally, consistent with our waiver policy, each of the franchising authorities has consented to the transaction. Based on the totality of the circumstances presented in WKC's waiver request, we find that grant of the subject petition would be consistent with the obligations under Section 617(d), and that such a waiver is in the public interest.

8. In view of the above, IT IS ORDERED that, the request for waiver of 47 C.F.R. §76.502(a) IS GRANTED.

9. This action is taken by the Chief, Cable Services Bureau pursuant to authority delegated by Section 0.321 of the Commission's rules.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

The Ameritech Telephone Operating Companies — AAD 93-146

ORDER TO SHOW CAUSE

Adopted: February 24, 1995; Released: March 3, 1995

By the Commission:

1. At the direction of this Commission, the National Exchange Carriers' Association, Inc. ("NECA") hired Ernst and Young to conduct an independent audit of carrier-reported adjustments to the Common Line ("CL") revenue pool for 1988 and the first quarter of 1989.[1] Our subsequent review of that Commission-mandated audit revealed apparent violations of our accounting rules and reporting requirements by the Ameritech Telephone Companies ("Ameritech") during the audit period. These apparent violations may have continued beyond the period covered by the audit. This Order to Show Cause sets forth those apparent violations and directs Ameritech to show cause why this Commission should not: (1) issue a Notice of Apparent Liability for Forfeiture ("NAL") for apparent violation of Section 220(d) of the Communications Act of 1934, as amended;[2] (2) require Ameritech to adjust its price cap indexes ("PCIs"); and (3) require Ameritech to improve its internal processes to bring them into compliance with Commission rules and orders.

2. Enforcing our accounting rules and reporting requirements is essential for the Commission to carry out its statutory obligations to ensure that rates for telecommunications services remain just and reasonable. Our ability to carry out these obligations is impaired if we cannot rely upon the information that carriers are required to submit about the costs of their operations and their allocations of those costs, or if those allocations are made improperly. As the telecommunications marketplace continues to diversify, with carriers providing more and more nonregulated services, our enforcement of accounting safeguards will become even more important if we are to continue to protect ratepayers from being overcharged for interstate services.

I. BACKGROUND

3. Our rules require the LECs, on a monthly basis, to report to NECA their revenue, expense and investment data. NECA uses these data to compute each LEC's monthly pool shares.[3] Because LECs do not have complete data available when they first report to NECA, the LECs initially report estimated data. In the following months, the LECs are required to reconcile their estimates with actual results. To ensure the accuracy of the reconciliation process, and because even the best accounting systems sometimes fail to prevent errors, NECA procedures allow the LECs twenty-four months to reconcile and correct previously submitted data. Thus, in each monthly "settlement cycle," LECs report estimated data for the current month as well as adjusted data for the preceding twenty-four months.

4. In the December 1988 settlement cycle, certain LECs reported unusually large adjustments to the CL pool. Commission staff audited the larger of these adjustments and found that they appeared to have been encouraged by NECA Board members representing the BOCs and further found the adjustments apparently inconsistent with the Commission's rules. As a result, the Commission issued *Notices of Apparent Liability for Forfeiture and Orders to Show Cause* against the BOCs that filed these adjustments.[4] The Commission also issued a letter of reprimand to the NECA Board of Directors and required, *inter alia*, that NECA hire an independent auditor to perform a comprehensive audit of significant adjustments the BOCs reported to the CL pool for 1988 and 1989.[5]

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[1] NECA collects cost data, including revenue, expense and investment data, from all local exchange carriers ("LECs") on a monthly basis. These data are then used to develop LEC-specific revenue requirements which are designed to recover those LEC-incurred costs that are allocated to the interstate jurisdiction under our jurisdictional separations rules, 47 C.F.R. Part 36. The revenue requirement development process is called "pooling," because, initially, all LEC-submitted cost data are combined ("pooled") based on whether they are non-traffic sensitive (*e.g.*, CL) or traffic sensitive ("TS") in nature. Accordingly, NECA administers two revenue pools. Non-traffic sensitive, CL costs are pooled to develop CL revenue requirements, and TS costs are pooled to develop TS revenue requirements. The revenues required to recover CL costs are collected through (1) carrier common line charges billed to the interexchange carriers; (2) subscriber line charges billed to end users and other customers; and (3) surcharges assessed against special access customers. These charges are set forth in tariffs NECA prepares for pool members, primarily the smaller, independent LECs. Other LECs -- including the Bell Operating Companies ("BOCs") -- currently do not participate in the cost recovery pools and, instead, prepare their own access tariffs. As explained *infra*, however, the pools are calculated based on revenue data provided by all LECs, and revenue data reported to NECA by the large carriers will, therefore, affect the charges of pool members. Moreover, during the time period covered by the audit, our rules required all LECs to participate in the CL pool.

[2] 47 U.S.C. §220(d). The Ameritech Telephone Operating Companies are the Illinois Bell Telephone Company (Illinois Bell), the Indiana Bell Telephone Company, Inc. (Indiana Bell), the Michigan Bell Telephone Company (Michigan Bell), the Ohio Bell Telephone Company (Ohio Bell), and Wisconsin Bell Inc. (Wisconsin Bell).

[3] 47 C.F.R. §69.605.

[4] *See, e.g.*, Southwestern Bell Telephone Co., *Notice of Apparent Liability for Forfeiture and Order to Show Cause*, 5 FCC Rcd 7179 (1990). The Commission subsequently entered into Consent Decrees with the carriers, thus resolving these initial actions without determinations of liability. *See, e.g.*, Southwestern Bell Telephone Co., *Consent Decree Order*, 7 FCC Rcd 7692 (1992).

[5] Letter from Donna R. Searcy, Secretary, FCC, to Lawrence C. Ware, Chairman of the Board of Directors, NECA, 5 FCC Rcd 7183 (1990). The letter identified "significant adjustments" as individual adjustments of $100,000 or more that the BOCs had reported to the CL pool for 1988 and 1989, other than the adjustments that had been addressed in the Commission audit. The independent audit covered the fifteen data months from

5. NECA hired the public accounting firm of Ernst & Young to conduct the independent audit. Ernst & Young issued its report, which NECA submitted to the Commission.[6] That report includes numerous audit findings against the BOCs, including Ameritech. The conduct noted by Ernst & Young has had a substantial impact on the CL pool as well as on the carriers' interstate telecommunications services customers. This is because NECA distributes access tariff revenue based on reported data. Moreover, since the reported adjustments to the CL pool involve misstatements or miscalculations of interstate costs and revenues historically used to develop the reporting carrier's access charges, and, after 1988, its price cap indexes, the reporting carrier's interstate access customers, as well as end users, are affected. Although the independent auditor's report addressed the effects of the BOCs' conduct only on the CL pool, Commission auditors are examining the effect on all interstate telecommunications services. Those of the independent auditor's findings that were directed against Ameritech and that appear to warrant Commission action are the subject of this Order to Show Cause. The findings are summarized below. Attachment A provides the specific details of each finding, the Commission rules that were apparently violated, and the companies' responses to the findings. Attachment B presents, in tabular form, a summary of the apparent violations and their revenue impacts as revealed by the record to date.

II. THE FINDINGS

6. Section 220(a) of the Communications Act grants to the Commission specific authority to "prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject [to the Act]...."[7] In turn, Section 220(d) authorizes the Commission to impose forfeitures on carriers who do not keep such accounts, records, and memoranda in the manner prescribed by the Commission. The findings in Attachment A appear to reveal conduct by the Ameritech carriers that violates Section 220 for the period that is the subject of the audit, namely, the period beginning January 1, 1988, and ending March 31, 1989.[8]

7. The independent auditor's findings that we address here involve the misstatement or miscalculation of some $22.8 million of interstate costs and revenues for the period from January 1988 through March 1989.[9] In the aggregate, these misstatements or miscalculations apparently benefited Ameritech to the detriment of the users of Ameritech's interstate services. These misstatements or miscalculations also shifted costs between or among access elements, thus apparently understating or overstating Ameritech's interstate revenue requirements for particular services. The seriousness of the misstatements is compounded here not only because of the net impact and the extent of understatements and overstatements, but also because of the scope and number of the errors or apparent violations, and the fact that they may have continued to the date of this Order to Show Cause. The findings reveal the Ameritech carriers' apparent failure to maintain their accounts, records, and memoranda in the manner prescribed by the Commission. To the extent that this conduct has continued, it must seriously undermine the Commission's confidence that Ameritech's accounts accurately reflect Commission-mandated accounting practices and reveal the true and lawful costs of Ameritech's interstate services. Moreover, and as explained more fully below, the apparent rule violations and misstatements may very well have led Ameritech to compute price cap indexes that likely would require correction.

8. In the following paragraphs we describe the accounting irregularities that have led us to issue this Order to Show Cause.

A. Apparent Cash Working Capital Violations

9. The independent auditor found numerous instances in which Ameritech's calculation of cash working capital allowances for its carriers apparently violates Commission requirements.[10] These allowances are supposed to reflect the average amount of investor-supplied capital needed to fund carriers' day-to-day operations.[11] The cash working capital allowance is added to the carrier's rate base, thereby increasing the earnings the carrier is allowed. Some of the apparent violations found by the independent auditor were more serious than others. For example, in the face of a

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January 1, 1988 through March 31, 1989, after which time participation in the CL pool became voluntary and all BOCs left that pool. The letter, however, also required that the independent audit "include adjustments reported after [the BOCs] left the pool on April 1, 1989" since carriers were allowed to submit adjustments for up to twenty-four months following a particular data month. *Id.* As a result, the independent audit examined reported CL pool adjustments through March 1991.

[6] The Ernst & Young audit report is hereafter referred to as the " *Adjustments Report.* " On February 11, 1993, the Commission concluded that this audit had complied with Commission directives and had been performed "with a high degree of skill and care," and that the independent auditor had "exercised sound professional judgment reflecting purposes of the [audit] and the information gathered during [its] course." *See* Letter from Donna R. Searcy, Secretary, FCC, to Robert A. McArton, Chairman of the Board of Directors, NECA, 8 FCC Rcd 1315 (1993).

[7] 47 U.S.C. §220(a).

[8] The apparent violations roughly fall into two categories for purposes of potential remedies. First, certain apparent violations found to fall outside the applicable limitations period for assessing forfeitures may, nevertheless, necessitate corrective action by the Commission. For example, the Commission may require adjustments to carrier price cap indexes to eliminate distortions caused by unlawful conduct. Second, other apparent violations, if found to be continuing or to have continued into the period covered by the limitations period, could support Notices of Apparent Liability for Forfeiture under Section 1.80 of the Commission's Rules, 47 C.F.R. §1.80, as well as support other remedies, such as price cap adjustments.

[9] These figures are based on estimates Ameritech provided to the independent auditor. *See* Letter from Bruce Baldwin, President, National Exchange Carrier Association, Inc., to Mr. Gerald P. Vaughan, Deputy Chief, Operations, Common Carrier Bureau, at Ameritech Attachment (Oct. 12, 1992) *(October 12 Letter).* Although those estimates encompass most of the independent auditor's findings, Ameritech did not provide estimates of the impact of certain findings on interstate rates and revenue requirements.

[10] *Attachment A,* at 1-10.

[11] *See, e.g.,* American Telephone and Telegraph Company, Docket No. 19129, *Phase II Initial Decision,* 64 FCC 2d 131, 389-90, paras.880-87 (1976); *Phase II Final Decision,* 64 FCC 2d 1, 76, para. 194 (1977) *(19129 Phase II Final Decision).*

requirement that they perform and use current lead-lag studies,[12] some Ameritech companies used old lead-lag studies without performing current ones; some performed current studies but used old ones that produced results more favorable to Ameritech; and some performed current studies but failed to include them in the development of cash working capital figures.[13] From the record, it appears that certain of these practices may have been discontinued, while others have continued beyond the audit period.

B. Allowance for Funds Used During Construction

10. Ameritech's method to calculate its allowance for funds used during construction ("AFUDC") is another area where there is an apparent continuing violation.[14] AFUDC is a regulatory tool used to compensate investors for funds used in construction projects. In the Docket 19129 proceeding, the Commission required that AT&T and the Bell System use the prime rate to compute AFUDC for ratemaking purposes.[15] According to the independent auditor, Ameritech used a rate other than prime to calculate its rate base despite the ruling in Docket 19129.[16]

C. Apparent Jurisdictional Separations Violations

11. Responsibility for regulating telephone services is shared between this Commission, which regulates interstate service, and state commissions, which regulate intrastate service. Carriers must use a process called jurisdictional separations to apportion their costs and revenues between the state and interstate jurisdictions. The separations procedures are set forth in Part 36 of our rules.[17] The independent auditor found that Ameritech apparently violated our rules in separating its information origination/termination equipment and circuit equipment investment.[18]

D. Apparent Violations Involving Misclassification of Revenue

12. Section 32.5081 of our rules[19] states that the end user revenue account (Account 5081) shall only contain the federally tariffed monthly flat rate charge that end users must pay. The independent auditor found that Ameritech improperly included presubscription revenues,[20] derived from its customers' predesignation of their primary interexchange carriers,[21] along with the allowed flat rate charge revenues in Account 5081.[22]

E. Other Apparent Errors

13. The independent auditor also found a number of other apparent rule violations that result from Ameritech's failure to ensure that its employees and software operate properly.[23] Although we recognize that even the most reliable accounting systems may occasionally experience errors, an accumulation of errors strongly suggests a faulty system. As such errors and other violations accumulate, the data carriers report to NECA under Section 69.605 of our rules[24] and to us under Parts 43 and 65 of our rules[25] become increasingly unreliable. Although these errors may have no current impact on Ameritech's interstate rates, their number and scope persuade us to order Ameritech to show cause why its internal accounting and accounting-related processes should not generally be brought into compliance with Commission rules and orders.

III. DISCUSSION AND CONCLUSION

A. NALS

14. We find that the Ameritech carriers' conduct appears to be inconsistent with their statutory obligation to maintain their accounts, records, and memoranda as prescribed by the Commission. Carriers must accumulate, process, and report their financial and operating data in accordance with very specific Commission requirements because we rely on those data to help us ensure that interstate telephone rates are just and reasonable. Moreover, we cannot evaluate how well our accounting rules work if carriers disregard or misinterpret these rules. Therefore, where, as appears to be the case with Ameritech, carriers either intentionally violate our rules or fail to maintain the internal systems necessary to ensure compliance with those rules, we believe forfeitures may be appropriate under Section 220(d) of the Act.[26]

15. Section 220(d) of the Act authorizes us to impose forfeitures of up to $6000 per carrier per day for accounting-related violations.[27] Obviously, any violations that con-

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[12] *See Attachment A*, at 1-2. Lead-lag studies measure cash inflows and outflows in relation to the time service is rendered. Revenue and expense items that are received or paid before a service is rendered are considered "lead" items, and revenue and expense items that are received or paid after service is rendered are considered "lag" items. Lead-lag studies determine the number of days between receipt of revenues and payment of expenses.

[13] *Attachment A*, at 2-9.

[14] AFUDC is synonymous with interest during construction.

[15] The prime rate is usually defined as the lowest rate of interest charged by a lender to its best customers for short-term unsecured loans. The Commission's statement requiring the use of the prime rate is found in the *19129 Phase II Final Decision*, 64 FCC 2d at 59-60. We reaffirmed this prime rate-based calculation in our rate base proceeding. *See* Illinois Bell Telephone Co. v. FCC, 911 F.2d 776, 782-783 (D.C. Cir. 1990) (*Illinois Bell I*).

[16] *Attachment A*, at 10.

[17] 47 C.F.R. Part 36.

[18] *See* Attachment A, at 11-14.

[19] 47 C.F.R. § 32.5081.

[20] Presubscription revenues refer to the charges that LECs assess when an end user decides to change his or her primary interexchange carrier.

[21] Under our rules, an end user has the right to select one interexchange carrier as his or her primary carrier. *See Investigation of Access and Divestiture Related Tariffs*, 101 FCC 2d 911 (1985) (describing the presubscription process LECs must follow).

[22] *Attachment A*, at 15.

[23] *Id.*, at 16-18.

[24] 47 C.F.R. §69.605.

[25] 47 C.F.R. Parts 43, 65.

[26] Section 220(d) provides for forfeitures if a carrier fails to keep its accounts, records and memoranda in the manner prescribed by the Commission. 47 U.S.C. §220(d).

[27] 47 U.S.C. §220(d). Prior to December 19, 1989, the forfeiture amount was fixed at $500 per violation per day.

tinued throughout the audit period and to the present could trigger substantial sums for the five Ameritech companies. In order to make a determination about the amount of any forfeitures that may lie, we direct Ameritech to state when the conduct described in paragraphs 8 through 12 and detailed in Attachment A ceased, if ever, and otherwise show cause why notices of apparent liability pursuant to Section 1.80 of the Commission's rules should not issue.[28] Although Ameritech's violations began January 1, 1988, we would assess forfeitures only for the period allowed for by the limitations period.[29] Ameritech's response should include a discussion of the appropriate application of the limitations period and also should identify any mitigating circumstances we should consider in determining forfeiture amounts.[30]

B. Adjustments to Price Cap Indexes

16. As indicated above, Ameritech did not provide estimates of the impact on interstate service rates and revenue requirements of certain conduct described in the independent auditor's findings.[31] So that we may assess the full impact of Ameritech's conduct, we order the Ameritech carriers to estimate the interstate impact of each of these findings, and to file those estimates with the Commission. This filing shall include estimates of the annual effect of each of the additional findings on Ameritech's CL, TS, special access, billing and collection, and interexchange costs and revenues for the period from January 1, 1988 to the public release date of this Order to Show Cause. We also direct Ameritech to provide estimates of the impact on the operating companies' interstate revenue requirements attributable to all conduct discussed herein and in Attachment A that continued beyond the period of the audit, and to file these estimates with its response. We specifically order Ameritech to provide a revised estimate of the impact of calculating AFUDC at rates other then the prime rate.

17. Since January 1, 1991, the Commission has regulated Ameritech's interstate access charges using the LEC price cap rules.[32] Under these rules, Ameritech's initial price cap indexes were established based upon its projected interstate access revenue requirements for July 1, 1990 to June 30, 1991. Ameritech's calculation of those revenue requirements may have reflected the practices detailed in Attachment A. Because, under price cap regulation, each succeeding price cap index for a basket of services is a function of the initial price cap index for that basket, Ameritech's price cap indexes for its interstate services (and, by definition, its interstate rates) would have continued to reflect the impact of any improper practices.[33] Absent Commission action, Ameritech's future indexes would reflect any overstatement as well. Therefore, we order Ameritech to show cause why we should not require it to reduce its current price cap indexes to remove any overstatement.[34]

C. Corrective Action

18. Finally, we tentatively conclude that we should direct the Ameritech carriers to improve their internal processes to bring them into compliance with Commission rules and orders, and we order those carriers to show cause why such action should not be required. We will take any additional actions we believe appropriate, including issuing a further Order to Show Cause, based on Ameritech's response.

IV. ORDERING CLAUSES

19. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j), 220(d), and 504(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i), 154(j), 220(d), & 504(b), and Section 1.701 of the Commission's rules, 47 C.F.R. §1.701, that the Ameritech Telephone Operating Companies SHALL SHOW CAUSE within sixty (60) days of the release date of this Order to Show Cause why the Commission should not issue Notices of Apparent Liability for Forfeiture against these companies for failure to keep their accounts, records, and memoranda on the books and in the manner prescribed by the Commission as set out in this Order to Show Cause, including Attachments A and B which are hereby incorporated by reference, and therewith SHALL FILE any and all data and other information required by this Order to Show Cause, including information requested in Attachment A.

20. IT IS FURTHER ORDERED, pursuant to Sections 4(i), 4(j), 201-203, 205, 215, 217-219, and 220 of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i), 154(j), 201-03, 205, 215, 217-19, & 220, and Section 1.701 of the Commission's rules, 47 C.F.R. §1.701, that the Ameritech Telephone Operating Companies SHALL FILE within sixty (60) days of the release date of this Order to Show Cause interstate cost and revenue impact estimates as specified in paragraph 15, *supra*.

21. IT IS FURTHER ORDERED, pursuant to Sections 4(i), 4(j), 201-203, 205, 215, 217-219, and 220 of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i), 154(j), 201-03, 205, 215, 217-19, & 220, and Section 1.701 of the Commission's rules, 47 C.F.R. §1.701, that the Ameritech Telephone Operating Companies SHALL SHOW CAUSE within sixty (60) days of the release date of this Order to Show Cause why they should not be required to adjust their price cap indexes as specified in paragraph 16, *supra*.

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[28] 47 C.F.R. §1.80.

[29] *See* 47 C.F.R. §1.80(c)(2).

[30] *See* 47 U.S.C. §504(b).

[31] *See supra* note 9. The findings are discussed in paragraphs 8, 22, 25, 28 and 42 of Attachment A.

[32] *See Policies and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, 5 FCC Rcd 6786 (1990) (*LEC Price Cap Order*), *Erratum*, 5 FCC Rcd 7664 (Com. Car. Bur.1990), *modified on recon.*, 6 FCC Rcd 2637 (1991) (*LEC Reconsideration Order*), *aff'd, National Rural Telecom Ass'n v. FCC*, 988 F.2d 174 (D.C. Cir. 1993).

[33] *See* 47 C.F.R. §§61.44(b), 61.45(b)-(c).

[34] To achieve this, Ameritech would need to reduce its price cap indexes by the percentage change in its July 1, 1990 to June 30, 1991 projected interstate access revenue requirement that results from the removal of any overstatement. These reductions to the price cap indexes would need to be apportioned among the baskets based on the relative July 1, 1990 to June 30, 1991 projected interstate access revenue requirements in each basket.

22. IT IS FURTHER ORDERED, pursuant to Sections 4(i), 4(j), 201-203, 205, 215, 217-219, and 220 of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i), 154(j), 201-03, 205, 215, 217-19, and 220, and Section 1.701 of the Commission's rules, 47 C.F.R. §1.701, that the Ameritech Telephone Operating Companies SHALL SHOW CAUSE within sixty (60) days of the release date of this Order to Show Cause why they should not be required to improve their internal processes to bring them into compliance with Commission rules and orders.

23. IT IS FURTHER ORDERED that the Secretary shall send by certified mail a copy of this Order to Show Cause to Illinois Bell Telephone Company, 225 West Randolph Street, Chicago, Illinois 60606; Indiana Bell Telephone Company, 240 North Meridian Street, Indianapolis, Indiana 46204; Michigan Bell Telephone Company, 444 Michigan Avenue, Detroit, Michigan 48226; The Ohio Bell Telephone Company, 45 Erieview Plaza, Cleveland, Ohio 44114; and Wisconsin Bell, Inc., 722 North Broadway, Milwaukee, Wisconsin 53202.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Attachment A

1. We present below the apparent violations of the Ameritech carriers based on the findings in the Ernst & Young report that prompt us to issue the accompanying *Order to Show Cause*. For each apparent violation, we summarize the independent auditor's finding and any Ameritech reply. We also present our preliminary evaluation of the record. In general, the violations are categorized according to the ratemaking component affected, inlcuding, *inter alia*, cash working capital, allowance for funds used during construction, and jurisdictional separations. In attachment B, we present the information in the record that describes the impact of these apparent violations on the Ameritech carriers' interstate revenue requirements for the fifteen-month audit period.

A. Cash Working Capital

2. We find eleven instances in which Ameritech's calculation of cash working capital allowances apparently violated Commission requirements.[1] Specifically, Ameritech's development of those allowances appears to have violated Sections 65.800 and 65.820(d) and (e) of the Commission's rules, which instruct carriers on how to calculate the interstate rate base.[2] As a result of its cash working capital calculations, Ameritech reported incorrect information to NECA in apparent violation of Section 69.605 of the rules[3] and to the Commission in apparent violation of Section 65.600 of the rules.[4] Finally, to the extent this information has been reported in the Commission's automated database, Automated Reporting Management Information System (ARMIS), Ameritech also appears to have violated Section 43.21(a) of the rules, which requires that data filed in ARMIS be accurate, complete, and responsive, and certified as such by a senior carrier officer.[5]

3. The elements of lead-lag studies to calculate cash working capital were set forth in Docket No. 19129[6] and reaffirmed in Docket No. 86-497.)[7] Lead-lag studies measure cash inflows and outflows in relation to the time service is rendered. Revenue and expense items that are received or paid before a service is rendered are considered "lead" items, and revenue and expense items that are received or paid after service is rendered are considered "lag" items.[8] Lead-lag studies determine the number of days between receipt of revenues and payment of expenses. The net number of revenue lag days is then multiplied by the average daily cash expenses to determine cash working capital.[9] A positive net lag results in a positive cash working capital allowance, which increases the rate base; a negative one results in a negative allowance, which reduces the rate base.[10] In previous orders, we have set forth the specific criteria for the inclusion and exclusion of various items in cash working capital calculations, but the general rule is that the net lead or lag is applied to the average daily *cash* expenses. The specifics of the eleven apparent cash working capital violations are discussed below.

4. *Apparent Violation No. 1:* The independent auditor stated that beginning in October 1988, Ameritech included an equity component in the lead-lag study that it used to calculate its cash working capital. Equity, however, is a non-cash item. The independent auditor stated that this inclusion violated our clear statement in the *86-497 Reconsideration Order*,[11] which clarified and restated existing

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[1] The date on which each violation occurred is stated in the description of that violation, *infra* paras.3-21.

[2] 47 C.F.R. §§65.800, 65.820(d)-(e). These rules require carriers, such as the Ameritech operating companies, to calculate the cash working capital component of their interstate rate base either by performing a lead-lag studies of interstate revenue and expense items or by applying a specified formula. The Ameritech carriers elected to perform lead-lag studies.

[3] 47 C.F.R. §69.605.

[4] 47 C.F.R. §65.600. In these rate of return reports to the Commission, Ameritech is required to "provide full and specific answers to all questions propounded and information requested...." 47 C.F.R. §65.600(b), (d)(1).

[5] 47 C.F.R. §43.21(a).

[6] American Telephone & Telegraph Co., Docket No. 19129, *Phase II Final Decision*, 64 FCC 2d 1, 72-73, para. 187 (1977) (*19129 Phase II Final Decision*), *aff'g Phase II Initial Decision*, 64 FCC 2d 131 (1976) (*19129 Phase II Initial Decision*).

[7] Amendment of Part 65 of the Commission's Rules to Prescribe Components of the Rate Base and Net Income of Dominant Carriers, CC Docket No. 86-497, *Memorandum Opinion and Order*, 4 FCC Rcd 1697 (1989) (*86-497 Reconsideration Order*), *reconsidering* 3 FCC Rcd 269 (1987) (*86-497 Order*), *remanded sub nom.* Illinois Bell Telephone Co. v. FCC, 911 F.2d 776 (D.C. Cir. 1990) (*Illinois Bell I*), *on remand*, 7 FCC Rcd 296 (1991) (*84-497 Decision on Remand*), *affirmed sub nom.* Illinois Bell Telephone Co. v. FCC, 988 F.2d 1254 (D.C. Cir. 1993) (*Illinois Bell II*).

[8] Related terms include "expense lag" (the average net lag of all of a carrier's cash expenses); "revenue lag" (the average net lag of a carrier's revenues); and "net lag" (the net of a carrier's expense lag and revenue lag).

[9] *86-497 Decision on Remand*, 7 FCC Rcd at 297, para. 9.

[10] Annual 1990 Access Tariff Filings, *Memorandum Opinion and Order*, 5 FCC Rcd 4177, 4219 (1990).

[11] *Adjustments Report* at 1.

Commission policy on this matter. The independent auditor stated that the *86-497 Reconsideration Order* noted that "'the Commission has always excluded noncash items from lead-lag studies.'"[12] Further, the independent auditor stated that Ameritech recognized this policy in an October 1989 interoffice memorandum on rate base adjustments, but made no retroactive cash working capital adjustments.[13]

5. Ameritech objects to this finding, stating that it has violated no Commission rule, and that no retroactive adjustments are appropriate. Ameritech explains that it produced revised *Guidelines for Preparing Cash Working Capital Lag Studies* in March 1988, and that the new guidelines relied on the Commission's *86-497 Order* released in December 1987. Ameritech asserts that this Order does not preclude carriers from including an equity component in their cash working capital allowance. Ameritech states that the Commission's *86-497 Reconsideration Order*, released in February 1989, was the first time the Commission extended its historical exclusion of noncash expenses to include equity. Ameritech states further that equity is neither a noncash nor an expense item, and that the applicable rule, Section 65.820(d), continues to be worded in a way that permits the inclusion of an equity component in the development of the cash working capital allowance. It was only through an excess of caution, Ameritech states, that it decided to discontinue its inclusion of this component. In Ameritech's view, no retroactive adjustments are necessary or allowable, since retroactive rule-making would result if the ruling in the *86-497 Reconsideration Order* excluding equity from cash working capital and is applied to prior periods.[14]

6. Contrary to Ameritech's contentions, cash working capital has always been the product of a net number of lead or lag days and cash expenses.[15] Because the equity component included by Ameritech is not a cash expense, it has no part in this calculation. In addition, even if the Commission did not explicitly exclude equity from cash working capital in the *86-497 Order*, the omission in the order cannot logically or legally be relied upon to justify including equity in earlier calculations.[16] Ameritech argues, however, that because the equity component was not specifically listed among the exclusions, it can be included in cash working capital calculations pending further, more specific pronouncements by the Commission. We reject Ameritech's argument, and find that Ameritech apparently violated our cash working capital requirements. This apparent violation overstated the total interstate revenue requirement by $7,495,000 for the fifteen months period from January 1988 to March 1989.

7. *Apparent Violation No. 2:* In each monthly "settlement cycle", NECA recalculates the CL pool participants' shares of the CL pool for the previous 24 months. As the LECs' shares change, they pay funds to, or receive funds from, NECA. The "NECA settlement lag" describes the delay between NECA's initial distribution of funds for a given month and NECA's final distribution of funds for that month. To be accurate, cash working capital calculations must reflect any changes in settlements occurring during the 24-month adjustment window.

8. The independent auditor found that Illinois Bell and Wisconsin Bell developed the NECA settlement lag using only data from a three-month period. The independent auditor stated that this practice failed to reflect the full length of the adjustment period and resulted in an understatement of the interstate settlement lag.[17] Similarly, the independent auditor found that Ohio Bell developed the NECA settlement lag using payment data only from the month after the settlement month, thus failing to reflect the two-year window for NECA pool settlements. The independent auditor further found that Ohio Bell incorporated no dollar weightings in developing the NECA settlement composite lag factor.[18]

9. Again, Ameritech argues that its practices do not violate the Commission's rules, because Section 65.820(d) does not specify the methodology for calculating the lag for NECA settlements, but requires only that carriers complete lead-lag studies. Ameritech states that it is within each LEC's discretion to determine an appropriate method for calculating the lag for NECA settlements, and that the independent auditor has not demonstrated that any of Ameritech's methodologies for NECA settlement lags were unreasonable.[19] Ameritech does not address the independent auditor's finding that Ohio Bell failed to incorporate dollar weightings in developing its NECA settlement lag.

10. We do not agree with Ameritech's position that, because Section 65.820(d) does not prescribe a method for calculating lag, no methodology has ever been specified. In Docket 19129, methodologies for calculating cash working capital were discussed and clarified, including lead-lag study methodologies,[20] and in Docket 86-497, the Commission confirmed and expanded upon these explanations.[21] We reject Ameritech's assertion that it is within each LEC's discretion to determine its own methodology for developing lag times. Although the Commission's rules do not explicitly address the treatment of the NECA settlement lag, the Commission requires the use of lead-lag studies, and carriers do not have the discretion to use lags different from the actual lag in completing those studies. Ameritech apparently used different lags, which appears to violate our

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[12] *Id., quoting 86-497 Reconsideration Order*, 4 FCC Rcd at 1699, para. 23.

[13] *Adjustments Report* at 1.

[14] *Id.* at 2.

[15] *Illinois Bell I*, 911 F.2d at 783; *86-497 Reconsideration Order*, 4 FCC Rcd at 1700, para. 28; *86-497 Order*, 3 FCC Rcd at 279, para. 71; *Docket 19129 Initial Decision*, 64 FCC 2d at 403-04, paras. 880-87.

[16] Ameritech refers to, and is apparently aware of, the full documentation of the relevant proceedings -- not only Docket 86-497, but also the earlier Docket 19129. We direct Ameritech's attention to the Administrative Law Judge's (ALJ's) statement in Docket 19129 excluding items because they "do not involve a cash outlay and are therefore not properly included in working capital requirements." *Docket 19129 Initial Decision*, 64 FCC 2d at 404, para. 887.

[17] *Adjustments Report* at 5, 25.

[18] *Id.* at 24. In computing a composite lag, lead or lag days associated with individual categories of costs or revenues are multiplied by the dollar amounts of those individual costs or revenues, producing a lead or lag dollar amount for each. Then the individual lead or lag dollars are combined to arrive at a weighted average total that is the composite lag.

[19] *Id.* at 5.

[20] *Docket 19129 Phase II Initial Decision*, 64 FCC 2d at 403-05, paras. 880-87.

[21] *86-497 Reconsideration Order*, 4 FCC Rcd at 1697-1700, paras. 23-32.

cash working capital requirements. In addition, to compute its cash working capital requirement for the NECA settlement lag, Ohio Bell should have multiplied the individual lag days by the corresponding payment amounts. Ohio Bell's apparent failure to do this also apparently violates our cash working capital requirements.

11. *Apparent Violation No. 3:* The independent auditor also found that Illinois Bell violated the requirements established in Docket 19129 by developing subscriber revenue lags using data from a three-month period, but including uncollectibles from only the third month. The independent auditor stated that failing to include uncollectibles from the first two months overstated this lag factor.[22] Illinois Bell responds that it did indeed include uncollectibles for all three months of the period in question, but that it recorded a cumulative uncollectible balance at the end of the three months. Illinois Bell states that the group that prepared a revised study that furnished separate lags for interstate and intrastate revenues also made a change in applying uncollectibles in the lead-lag study. The office responsible for implementing the new study was unaware of the uncollectibles change, however, and did not report a retroactive adjustment to NECA for January through July 1988, but simply applied the new lags to the August data month on a going-forward basis. Illinois Bell argues that this "isolated error" should not be considered a violation of the Commission's rules.[23]

12. We reject Illinois Bell's suggestion that this constitutes an isolated error. We find an apparent violation in this regard and note that it is one of e'even apparent violations in Ameritech's cash working capital calculations. This error apparently overstated the total interstate revenue requirement by $343,000.

13. *Apparent Violation No. 4:* The independent auditor found that Wisconsin Bell developed its customer revenue lag without including subscriber line charges (SLCs) that it had billed in advance, thus misstating that lag.[24] The independent auditor indicated that this resulted in a $435,000 overstatement of Ameritech's interstate revenue requirements for January 1988 through March 1989.[25] Ameritech admits that SLC revenues should have been included in the computation of its customer revenue lag, but states that the personnel developing this lead-lag study had not worked on previous studies and were unfamiliar with the correct methodologies.[26] This explanation makes clear that Wisconsin Bell did not have sufficient internal controls to ensure that our cash working capital requirements were observed.

14. *Apparent Violation No. 5:* The independent auditor found that Michigan Bell used an obsolete lead-lag study. Michigan Bell had completed a subscriber revenue lag study in 1988, but used a 1985 study to calculate the data contained in its 1988 submissions to NECA, according to the independent auditor.[27] In response, Ameritech states that, because of a communication failure, the 1988 subscriber revenue lag study was never sent to the group responsible for the separations processing, and that this failure was not discovered until the independent audit. Ameritech argues that this mistake should be seen as an isolated and unintentional error, and not as a violation.[28]

15. Ameritech's explanation makes clear that Michigan Bell personnel erred in not incorporating the 1988 subscriber revenue lag study in its cash working capital calculation. As before, we note that this error is one of many and that it apparently understated the total interstate revenue requirement by $494,000.

16. *Apparent Violation No. 6:* Minimum bank balance are balances "maintained in an account to compensate banks, in lieu of fees, for services provided to that account."[29] The independent auditor found that Ameritech used average daily ledger balances (or, in the case of Michigan Bell, "Average Collected Balance") rather than minimum bank balances to compute cash working capital.[30] In Docket 19129, the ALJ made clear that minimum bank balances, rather than actual balances, were to be used in lead-lag study development.[31] Nonetheless, after noting that the 1987 *86-497 Order* was silent on this point, Ameritech asserts that the 1989 *86-497 Reconsideration Order* was the first Commission statement that only minimum bank balances and working cash advances were to be used in the working capital allowance. Ameritech states that, since lead-lag studies clearly assume a zero cash balance,[32] development of cash working capital allowance must recognize minimum cash balances. Ameritech states further that, in the absence of Commission guidance on how carriers were to determine working capital allowances, Michigan Bell determined that Account 1130, Cash, would be used.[33]

17. It is true that the *86-497 Order* was silent on this issue. That Order did not discuss this matter because it had been resolved in Docket 19129 some ten years earlier. In Docket 19129, the Commission determined that minimum bank balances and working cash advances, rather than actual cash balances, were to be used in cash working capital calculations.[34] We include minimum bank balances in cash working capital calculations to protect carriers

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[22] *Adjustments Report* at 5.

[23] *Id.* at 6.

[24] *Adjustments Report* at 25.

[25] Letter from Bruce Baldwin, President, National Exchange Carrier Association, Inc., to Mr. Gerald P. Vaughan, Deputy Chief, Operations, Common Carrier Bureau, Ameritech Attachment at 3 (October 12, 1992)(*October 12 Letter*).

[26] *Adjustments Report* at 26-7.

[27] *Id.* at 21.

[28] *Id.* at 22.

[29] *Docket 19129 Phase II Final Decision*, 64 FCC 2d at 76, para. 195 n.102.

[30] *Id.* at 21.

[31] The ALJ emphasized that:

> working capital is intended to provide only for the current day-to-day needs of the business and not for any of the capital requirement. Second, working capital is the amount of dollars that are necessary to meet current needs, not the amount of dollars that a public utility would like to have on hand or might actually have on hand.

Docket 19129 Initial Decision, 64 FCC 2d at 403, para. 881.

[32] In a lead-lag study, the timing of the collection of revenues is compared with the payment of expenses. The cash payments for expenses that cannot be matched with cash receipts represent the funds that must be supplied by investors and that are added to the rate base. Since it is assumed in a lead-lag study that all funds whether from receipts or from investors are paid out for expenses, the balance in the bank account is assumed to be zero.

[33] *Adjustments Report* at 22.

[34] *Docket 19129 Final Decision*, 64 FCC 2d at 76, para. 195;

from loss if their money is encumbered because of a bank requirement. We do not, as Ameritech suggests, allow carriers to earn a return on whatever additional money they may have in the bank. Using average daily ledger balances apparently increased Ameritech's interstate revenue requirement by $425,000.

18. *Apparent Violation No. 7:* The independent auditor found that in computing cash working capital, Michigan Bell included Account 5081, End user revenue, in access net booked revenue, rather than in customer net booked revenue, resulting in an overstatement of Michigan Bell's average net investment and the CL revenue requirement.[35] This error increased Michigan Bell's interstate revenue requirement by $1,530,000 for the fifteen months from January 1988 to March 1989.[36] Ameritech responds that the segregation of work responsibilities at Michigan Bell resulted in Michigan Bell's using a Bellcore guideline rather than the appropriate Ameritech guideline. The Bellcore guideline, Ameritech states, directed that "customer-billed revenues are company revenues included on regular customer bills including Subscriber Line Charges."[37]

19. Michigan Bell states that it used the Bellcore guidelines rather than Ameritech guidelines, but that it departed from the Bellcore guidelines to include end user revenues in access net booked revenue rather than in customer net booked revenue, because it believed that following Bellcore's guidelines would double count SLCs.[38] This departure from the guidelines, however, resulted in a different error, the inclusion of end user revenue in access net booked revenue. This error, and the resulting apparent $3,276,783 overstatement of Michigan Bell's average net investment, strongly suggest that Michigan Bell's internal accounting control procedures are inadequate.

20. *Apparent Violation No. 8:* The independent auditor stated that Indiana Bell used lead and lag factors based on a non-current study or, in some cases, on no study at all. Many of these factors (those for revenue, tax, interest expense, and postage, for example) were developed around 1980. Other factors could not be traced to any study, but were merely estimated by Indiana Bell personnel.[39] Ameritech objects to this finding, stating that the factors were consistent with Indiana Bell's separations system and that Indiana Bell did not violate any Commission order or rule.[40] This procedure apparently overstated the total interstate revenue requirement by $3,250,000, according to the independent auditor.

21. Much happened to change Indiana Bell's operations between 1980 and 1988. That company's reliance on lead and lag factors developed around 1980 or estimated by Indiana Bell personnel is also inconsistent with Indiana Bell's obligation to ensure that its cash working capital calculations reflect current needs.

22. *Apparent Violation No. 9:* Moreover, Indiana Bell had a new study that it could and should have used in 1988. The independent auditor found that Indiana Bell completed, but did not use a lead lag study in 1988. The independent auditor stated that the study was completed in August 1988, but was used only from April 1989, rather than for the full period for which it applied (calendar years 1988 and 1989).[41] Ameritech argues that a violation did not occur because nothing in the Commission's rules informs carriers regarding when they must apply such a study, nor whether they must make retroactive adjustments once the study is in place. Ameritech notes that Indiana Bell completed the study in August 1988, but that Indiana Bell's review process was completed only in September 1989; the newly revised study was introduced retroactive to April 1989.[42]

23. Ameritech admits that it took Indiana Bell over one year to complete its review of its 1988 lead-lag study. We find that a study review cycle that protracted is inconsistent with Indiana Bell's obligation to ensure that its cash working capital calculations reflect current needs, rather than those for prior periods.[43]

24. *Apparent Violation No. 10:* The independent auditor stated that Wisconsin Bell withdrew a 1988 lead-lag study introduced in September 1988 and reintroduced a 1980 lead-lag study because the 1988 study led to lower cash working capital figures. The independent auditor stated that the 1980 factors were substantially different from those in the 1988 study.[44] The independent auditor estimated that use of the old factors produced an interstate revenue requirement overstated by $2.9 million for the fifteen-month period beginning January 1988.[45] Wisconsin Bell states that the 1980 study it used was the most current study prior to the development of the new study, and that the new study could not be used until the significant revenue requirement shifts it produced could be explained. The analysis needed to produce such explanation was delayed, Ameritech explains, because of changes in the Commission's rules, Wisconsin Bell's implementation of a new computer system, and confusion among Wisconsin Bell's staff. Wisconsin Bell argues that this delay was reasonable, and that it showed good business judgment in reintroducing the 1980 study.[46] As noted above, however, Wisconsin Bell's actions in this regard violated the Commission's requirement that it have and use a current lead-lag study for cash working capital development. Indeed, Wisconsin Bell's use of the eight-year old study strongly suggests the inadequacy of its internal control systems.

25. *Apparent Violation No. 11:* The independent auditor noted that all the Ameritech carriers have treated differently the revenues included as billed in arrears and billed in advance, which are used to calculate the composite lag between the midpoint and the end of the billing period.[47] These calculations are used to develop the inter-

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Docket 19129 Initial Decision, 64 FCC 2d at 409-10, paras. 905-08; *accord 86-497 Reconsideration Order*, 4 FCC Rcd at 1698-99, paras. 17, 22.

35 *Adjustments Report* at 23-24.

36 *October 12 Letter*, Ameritech Attachment at 2.

37 *Adjustments Report* at 23.

38 *Id.*

39 *Id.* at 6.

40 *Id.* at 7.

41 *Id.* at 7-8.

42 *Id.* at 8.

43 *See Docket 19129 Initial Decision*, 64 FCC 2d at 403, para. 881.

44 *Adjustments Report* at 26.

45 *October 12 Letter*, Ameritech Attachment at 3.

46 *Adjustments Report* at 27.

47 In note 18, *supra*, we describe how LECs should calculate composite lags.

state customer revenue lag. Illinois Bell included both SLCs billed in advance and toll revenues billed in arrears on behalf of the interexchange carriers when it calculated its interstate customer revenue lag factor. Ohio Bell included SLC revenues, but not toll revenues. Wisconsin Bell included toll revenues, but not SLCs. Michigan Bell performed a study, but did not implement it. Indiana Bell did not undertake a study during this period.[48]

26. Ameritech argues that lack of consistency is not a rule violation. According to Ameritech, this lack of consistency is normal and justifiable, because it is not unlawful or unusual for individual companies to interpret and apply the rules somewhat differently. Moreover, Ameritech asserts that the Commission's rules will support either the inclusion or exclusion of toll revenues in the customer revenue lag.[49]

27. While we have not required all carriers within a holding company to adopt uniform lead-lag study procedures, the principles for such studies are constant. Those principles mandate that a current study be used and that all interstate revenues be included in the interstate customer revenue lag. Indiana Bell had no current study during the audit period. Michigan Bell had a current study, but did not use it. Ohio Bell and Wisconsin Bell failed to observe the second principle. Therefore, we find that Ameritech's interstate customer revenue lag calculations apparently violatated our rules.

B. Allowance for Funds Used During Construction

28. *Apparent Violation No. 12:* In the Docket 19129 proceeding, the Commission specified that, for ratemaking purposes, AT&T and the Bell System use the prime rate to compute the allowance for funds used during construction (AFUDC) of long-term projects.[50] The independent auditor found that the Ameritech carriers failed to use that rate to calculate AFUDC. The independent auditor stated that Ohio Bell used a source of funds rate that had both debt and equity components, and that the other four Ameritech carriers used their authorized, intrastate AFUDC rates.[51]

29. Ameritech objects to the independent auditor's finding, stating that the adoption of the prime rate as the basis of AFUDC rate development was based explicitly on a finding that AT&T was financing its construction program in great part with short-term debt. Because this was not true for Ameritech companies, Ameritech argues, the finding and requirement did not apply to them. In fact, based on the differences between AT&T's financing approach and its own, Ameritech argues that it filed a petition for rulemaking in January 1991 to clarify that the prescribed interstate rate of return was an appropriate AFUDC rate.[52]

30. We find that Ameritech's approach to calculating AFUDC was unauthorized. While we agree that the Commission's decision in Docket 19129 to require the Bell System to use the prime rate in calculating interest during construction was based on AT&T's financing of construction, the requirement, once in place, continued to apply to both AT&T and the BOCs until changed.[53] Ameritech's decision that the requirement should no longer apply to Ameritech should have led to a timely petition for waiver or a petition for rulemaking to produce a ratemaking policy that more accurately reflected how Ameritech funds its construction program. Absent a change in Commission policy, Ameritech was obligated to use the applicable prime rate in its AFUDC calculations for ratemaking purposes. We note that Ameritech failed to correct its AFUDC practices, even though it was advised of our requirements long before the end of the two-year NECA adjustment period.[54]

31. Based on information Ameritech provided, the independent auditor's report estimated that the use of rates other than the prime rate to compute Ameritech's AFUDC resulted in the understatement of Ameritech's CL revenue requirements of $397,000.[55] We question whether the estimate of the revenue requirement impact is correct. The prime rate rarely exceeds rates based on sources of funds that include both debt and equity, and calculating AFUDC at rates higher than the prime rate would overstate the carriers' rate bases, depreciation expenses, and consequently interstate revenue requirements. A $397,000 revenue requirement understatement appears too low to capture the impact of Ameritech's use of AFUDC rates at higher than the prime prior to the audit period. Therefore, Ameritech is instructed to recalculate the impact of its practices on its interstate revenue requirement for the period from January 1988 to the present.

C. Jurisdictional Separations

32. *Apparent Violation No. 13:* Section 36.142(a) of the Commission's rules.[56] requires certain carriers, including the Ameritech carriers, to apportion all information origination/termination (IOT) equipment costs,[57] other than those for coinless pay telephone equipment and detariffed customer premises equipment, between the federal and state jurisdictions using the transitional subscriber plant factor.[58] Section 69.603(b) of the Commission's rules, in

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[48] *Id.* at 4.

[49] *Id.*

[50] *19129 Phase II Final Decision*, 64 FCC 2d at 59-60. AFUDC is synonymous with interest during construction.

[51] *Adjustments Report* at 2-3.

[52] *Id.* at 3-4.

[53] *See, e.g.*, Accounting and Ratemaking Treatment for the Allowance of Funds Used During Construction (AFUDC), *Notice of Proposed Rulemaking*, Docket No. 93-50, 8 FCC Rcd 2084, 2084, para. 3 (1993) ("[t]he approaches specified in Docket 19129 are still in effect today."); *see also Illinois Bell I*, 911 F.2d at 780-81; *86-497 Reconsideration Order*, 4 FCC Rcd at 1703, paras. 56-57.

[54] *86-497 Reconsideration Order*, 4 FCC Rcd at 1703.

[55] *Adjustments Report* at 3.

[56] 47 C.F.R. §36.142(a).

[57] IOT equipment consists of electronic devices and supporting equipment used to originate and terminate telecommunication messages at the end users' premises. *See* 47 C.F.R. Part 36, Appendix. It includes station apparatus such as telephone and miscellaneous equipment, teletypewriter equipment, small private branch exchanges, and radio equipment (excluding mobile) installed for the end users' use. It also includes embedded customer premise wiring, large private branch exchanges, public telephone terminal equipment, and other terminal equipment. *See* 47 C.F.R. §36.141(a).

[58] The subscriber plant factor was formerly used to allocate to interstate operations certain investment in plant; subscriber lines, station equipment, and a portion of central office switching used for message telephone service. Each company's subscriber plant factor was frozen at its 1981 average level and then phased into a nationwide basic allocation factor of 25% over

turn, requires LECs to apportion the interstate portion of that investment between the special access and CL elements "on the basis of the relative number of equivalent lines in use."[59]

33. The independent auditor found that Michigan Bell violated Section 36.142(a) by directly assigning IOT costs to special access services. Michigan Bell used the transitional subscriber plant factor sometimes, but not others, according to the independent auditor. The independent auditor stated that Michigan Bell initially apportioned its IOT costs for January and February 1988 using the transitional subscriber plant factor, but, in retroactive adjustments, directly assigned a portion of its January and February 1988 IOT costs to special access services. This direct assignment continued for the remainder of the audit period, according to the independent auditor. But in a second retroactive adjustment, the independent auditor stated, Michigan Bell revised the direct assignment of these IOT costs for January through March of 1989, returning to use of the transitional subscriber plant factor. The independent auditor also stated that this adjustment did not change the direct assignment Michigan Bell had previously made for 1988,[60] which resulted in an understatement of $3,495,000 in CL costs, an understatement of $6,000 in TS costs, and an overstatement of $3,728,000 in special access costs, for a net total interstate overstatement of $228,000, according to the independent auditor.[61]

34. Ameritech argues that, until issuance of the August 21, 1991 Letter of Interpretation on Direct Assignment,[62] it believed that it could use direct assignment wherever it thought it applicable. Ameritech relies on the general language of Section 36.1(c) of the Commission's rules[63] to support this position. Ameritech acknowledges that it knew that Commission staff had told other carriers to use the allocator prescribed in Section 36.142(a). Nonetheless, Ameritech argues, until the August 21, 1991 Letter of Interpretation, carriers had the option to assign these IOT costs directly.

35. Our Part 36 rules prescribe the procedures that telecommunications companies must use in apportioning their costs and revenues between the state and interstate jurisdictions. Sections 36.1 and 36.2 outline the separations procedures and the principles that underlie them.[64] These sections state that jurisdictional separations use either direct assignment or a particular allocator.[65] Direct assignment identifies cost classifications or categories as wholly state or wholly interstate without the need to employ a relative use factor.

36. These general statements do not grant carrier discretion, but only introduce the Part 36 rules that specify when and how direct assignment or allocators should be used. If the general introductory statements had been meant as dispositive, there would have been no need for specific language, in particular the rules that follow Sections 36.1 and 36.2, to allow or encourage the use of direct assignment.[66] Further the common practice prior to the August 1991 Letter was for a carrier wishing to use a method other than that specified in the rules to request Commission approval of the change.[67] Not only did Michigan Bell make no such request, it also chose not to follow informal Commission staff guidelines of which it was aware. Ameritech's direct assignment of IOT investment to special access was apparently inconsistent with Sections 36.142(a) and 69.603(b) of our rules.

37. *Apparent Violation No. 14:* Separation rules divide cable and wire facilities into four categories[68] and prescribe different rules for apportioning the costs in each category between the state and interstate jurisdictions. Section 36.156 of our rules[69] specifies the method of apportioning category 3, interexchange cable and wire facilities, between the federal and state jurisdictions. This rule section requires a two step allocation process.

38. First, Section 36.156(a).[70] requires that a total monthly cost for the category be determined by applying an average cost per interexchange circuit mile to the interexchange circuit mileage counts of each class of circuit. The independent auditor found that Michigan Bell could not support the category 3 book costs per circuit mile that it used to determine the monthly total for 1988.[71] Ameritech asserts that this cost figure was an output of a June 1986 basic study and that the backup for the cost could not be retrieved from its archives. Ameritech also asserts that the cost was reasonable, and that this independent auditor finding should be viewed as immaterial.[72] We disagree. Our rules require carriers to assign their cable and wire facilities to separations categories based on an analysis of carrier records.[73] Although Ameritech claims that it undertook such an analysis, its inability to substantiate the analysis strongly suggests that its internal control systems are apparently defective.

39. Second, Section 36.156(b).[74] requires that the category 3 costs be directly assigned to the state or interstate jurisdictions, where feasible. If it is not feasible, the costs are apportioned between the jurisdictions on the basis of relative conversation-minute miles associated with toll message circuits, TWX circuits, and other types of circuits such as those listed in Section 36.152(b).[75] The independent auditor found that Michigan Bell could not support the exchange access miles used in the allocation process for the November 1988 through March 1989. Michigan Bell stated that, while making corrections to certain circuit mileage data for November 1988, it inadvertently introduced another error which resulted in a double count of mileage. This error affected the data months from November 1988

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eight years beginning January 1, 1986. Thus, the subscriber plant factor became known as the "transitional subscriber plant factor" during the phase-in period. 47 C.F.R. §36.154(c)-(f).

[59] 47 C.F.R. §69.603(b).

[60] *Adjustments Report* at 14-15.

[61] *October 12 Letter*, Ameritech Attachment at 1.

[62] *Letter of Interpretation*, 6 FCC Rcd 5068 (Com. Car. Bur. 1991).

[63] 47 C.F.R. §36.1(c) (1990).

[64] 47 C.F.R. §§36.1, 36.2.

[65] 47 C.F.R. §§36.1(c), 36.2(a)(1).

[66] *Compare* 47 C.F.R. §36.157(a)(1) (certain cable and wire facilities costs to be apportioned) *with* 47 C.F.R. §36.157(a)(2) (other cable and wire facilities costs to be directly assigned).

[67] *Adjustments Report* at 14.

[68] 47 C.F.R. §36.151.

[69] 47 C.F.R. §36.156.

[70] 47 C.F.R. §36.156(a).

[71] *Adjustments Report* at 19-20.

[72] *Id.* at 12.

[73] *See* 47 C.F.R. §§36.151(b), 36.153.

[74] 47 C.F.R. §36.156(b).

[75] 47 C.F.R. §36.152(b).

through March 1989, when it was discovered along with several others error. Corrections were made back to January 1989, but not for any months of 1988 -- an oversight, according to Michigan Bell.[76] We find that Michigan Bell's inability to supply documents to support its actions again appears to reflect a lack of internal control, and its failure to correct its error for 1988 appears to be an apparent violation of Section 36.153.

40. The unsupported exchange access miles resulted in an overstatement of $353,000 in CL costs, an understatement of $1,246,000 in TS costs, and an overstatement of $115,000 in special access costs, for a net total interstate understatement of $778,000.[77] Michigan Bell did not determine the impact of the unsupported category 3 book costs per circuit mile.[78]

41. *Apparent Violation No. 15:* A basic principle underlying our jurisdictional separations rules is that carriers must apportion TS costs between the jurisdictions based on the actual use each makes of the carriers' telecommunications plant. To measure this usage, the rules require carriers to perform studies of traffic handled and work performed during representative periods.[79] These basic studies include circuit equipment studies that LECs perform to help apportion circuit equipment costs between the interstate and intrastate jurisdictions. Section 36.121(c) of our rules.[80] mandates that these studies reflect each carrier's analysis of its accounting, engineering and other records.

42. The independent auditor found that Indiana Bell used a circuit equipment study based on 1985 facility usage data, even though it had prepared a new study in 1986. The independent auditor stated that this reliance on an outdated study violated Ameritech's own basic study completion schedule, which mandates annual circuit equipment studies. The independent auditor stated that Indiana Bell continued to rely on this old study in order to prevent large and anomalous shifts between interexchange plant and loop plant.[81]

43. When our rules require a carrier to use a study based on its analysis of its accounting, engineering and other records, there is a fundamental assumption that the carrier will develop a useful, reliable study. Ameritech attempts to defend Indiana Bell's use of an obsolete study by stating that the 1986 study resulted in an unexpected and significant revenue requirement shift between interexchange plant and loop plant, that the study was based on defective Bellcore software, and that a new circuit equipment study based on corrected software was not completed until December 1989.[82] These defenses highlight Ameritech's failure to include in its internal control system procedures that would produce accurate studies on a timely basis. Ameritech's assertion that it failed to develop a reliable current study and, therefore, should be excused for using the obsolete study merely affirms the apparent violation the independent auditor found.

D. Misclassification of Revenue

44. *Apparent Violation No. 16:* Presubscription revenues are revenues generated when end users predesignate interexchange carriers as their primary interexchange carrier. The independent auditor found that Indiana Bell and Michigan Bell included these revenues in Account 5081, End user revenue, in violation of Section 32.5081 of the Commission's rules.[83] Ameritech states that Indiana Bell and Michigan Bell reported presubscription service order charge revenues as CL revenues, because the Commission's Part 69 rules and ARMIS reports treat these revenues differently from NECA procedures. Ameritech states that Section 32.5081 requires that presubscription revenues be booked to Account 5081; Part 69 then assigns Account 5081 to the CL rate element. According to Ameritech, NECA states that these revenues should be reported to the TS category, although this view was not made explicit until 1990, when NECA clarified its procedures for these revenues.[84]

45. We quote Section 32.5081 in its entirety:

> §32.5081 End user revenue. This account shall contain the federally tariffed monthly flat rate charge assessed upon end users.[85]

This language does not support Ameritech's assertions that the booking of presubscription revenues in Account 5081 was reasonable. Account 5081 is restricted to the revenue generated by the federally tariffed monthly flat rate charge assessed upon end users under Section 69.104 of the Commission's rules.[86] Account 5081 was established to identify and monitor the revenue from this charge.[87] Account 5081 does not include additional amounts, like presubscription revenues, even though they are tariffed amounts charged to end users. Presubscription revenues relate to the switched message toll service, and carriers must include them in

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76 *Id.* at 20.
77 *October 12 Letter,* Ameritech Attachment at 2.
78 *Id.* at 19.
79 47 C.F.R. §36.2(a)(2)-(3).
80 47 C.F.R. §36.121(c).
81 *Adjustments Report* at 9-10.
82 *Id.* at 9.
83 *See Adjustments Report* at 10, 18.
84 *Adjustments Report* at 11, 18.
85 47 C.F.R. §32.5081.
86 47 C.F.R. §69.104.
87 Amendment of Part 31, Uniform System of Accounts for Class A and Class B Telephone Companies of the Commission's Rules and Regulations and conforming amendments to Annual Report Form M and FCC Report 901, CC Docket No. 83-1347, *Report and Order,* 99 FCC 2d 58, 59 (1984).

Account 5082, Switched access revenue,[88] which is assigned to the traffic sensitive element as miscellaneous service revenues. This error apparently overstated Indiana Bell's and Michigan Bell's CL revenues by $2,093,000 for the fifteen month period from January 1988 to March 1989.

E. Lack of Documentation and Other Apparent Errors

46. *Apparent Violation No. 17:* Carriers first report their CL revenues and costs for any given month to NECA through "data month estimates" that reflect the carriers' initial view of the results for that month. Thereafter, when the carriers obtain actual data from corporate ledgers and records, they update the "data month estimates" by reporting to NECA any differences between the previous estimated figures and the actual data. The adjustments that carriers file to report these differences are called "data month actuals." The independent auditor found that Indiana Bell used the correct actual numbers, but data month estimates different from those it previously reported, to calculate the data month actuals for December 1988. The independent auditor stated that this use of incorrect figures overstated Indiana Bell's CL revenues for that month by $110,000.[89]

47. Ameritech states that a computer program failure caused Indiana Bell to use incorrect numbers by preventing the update to the estimated data file from operating correctly. According to Ameritech, the balancing procedure used in the process did not find the inconsistency because the actual billed dollars matched the corporate ledgers. Ameritech urges that, because this error occurred just once and was inadvertent, it should not be considered a violation.[90]

48. Ameritech's admission that Indiana Bell's personnel or automated systems failed to function properly and that it failed to detect the error appears to establish that, in this instance, Indiana Bell apparently did not maintain adequate internal accounting safeguards.

49. *Apparent Violation No. 18:* In June 1988, a Michigan Bell supervisor recognized that the data month estimates Michigan Bell was reporting to NECA for expenses and other taxes were falling about $1,000,000 short of actual results. Those estimates were based on a December 1987 forecast. The supervisor instructed Michigan Bell personnel to report $1,000,000 in additional expenses and other taxes to NECA for each remaining month of 1988. Unaware of this adjustment, a District Manager of Michigan Bell authorized another $1,000,000 adjustment for these costs for December 1988. The independent auditor found that Michigan Bell reported both of these additional amounts for December 1988 and that the second adjustment resulted in a $1,000,000 overstatement of Michigan Bell's CL revenue requirements for 1988.[91] Ameritech acknowledges this erroneous reporting, but seeks to excuse it as "not a violation of any FCC rule" because it was inadvertent and was the result of an unusual combination of circumstances.[92]

50. We have emphasized the need for carriers to maintain adequate internal accounting safeguards. The double counting of a monthly input, and Ameritech's explanation of it, show that in unusual circumstances, a Michigan Bell District Manager acted without contacting Michigan Bell pool input personnel regarding the expenses and other taxes amount entered by them; that the pool input personnel assumed that a letter from NECA regarding the second $1,000,000 adjustment concerned the first; and that Michigan Bell had no formal process for reviewing 1988 data that would have uncovered this error.[93] Proper procedures would have prevented this error. Michigan Bell's performance reveals an apparent lack of safeguards needed to ensure the accuracy of data reported to NECA.

51. *Apparent Violation No. 19:* The independent auditor found an additional violation based on an incomplete retroactive adjustment by Michigan Bell in August 1989 that corrected loop counts for January through March of 1989, but not for the calendar year 1988. The independent auditor stated that Michigan Bell reported this adjustment to correct double counting and misclassification of Centrex and some other types of joint message loops. These loops were originally incorrectly classified for separation purposes as Cable and Wire Facilities Category 1.1, at the same time as they were correctly classified as Cable and Wire Facilities Category 1.3. Michigan Bell corrected this error for January through March of 1989, but did not correct the same error for January through December 1988, according to the independent auditor. The independent auditor noted an understatement of common line revenue requirement of $2,161,000 for the uncorrected twelve-month period.[94]

52. Ameritech states that Michigan Bell was aware of the incorrect calculations, but determined that, because of the large quantity of data requiring review and correction, it could not develop accurate 1988 Centrex loop data for the period prior to the closing of the 1987-88 interstate monitoring period.[95] Knowledge of errors in submitted data creates an obligation to correct them. Ameritech's determination that it would be unable to complete the corrections prior to the end of the 1987-88 interstate monitoring period could not excuse it from discharging that obligation.

53. *Apparent Violation No. 20:* Ameritech, like other LECs, relies on a carrier access billing system (CABS) to process data related to services provided to interexchange carriers. The independent auditor found that Michigan Bell failed to report certain CABS adjustments to NECA.[96] The independent auditor stated that this error understated Michigan Bell's CL revenue requirements by $127,000.[97] Ameritech traces this error to a problem in a computer spreadsheet program, and states that the failure to correct for this error was inadvertent.[98] As stated above, we find that this error suggests that Michigan Bell's internal accounting safeguard systems were deficient.

54. *Apparent Violation No. 21:* Ohio Bell receives and collects interstate revenues from coin-operated public telephones. Ohio Bell did not include these revenues in the

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88 47 C.F.R. §32.5082.
89 *Adjustments Report* at 11.
90 *Id.* at 11-12.
91 *Id.* at 12-14.
92 *Id.* at 13-14.
93 *Id.* at 13.
94 *Id.* at 16-17.
95 *Id.*
96 *Id.* at 17.
97 *October 12 Letter*, Ameritech Attachment at 2.
98 *Adjustments Report* at 17.

public telephones revenues that were used as input data to its separation processes for 1988. Ohio Bell discovered this error and made a retroactive adjustment to NECA to correct it. The independent auditor found, however, that Ohio Bell only adjusted the data for July through December 1988.[99] Ameritech contends that its failure to adjust the data for January through June 1988 resulted from an inadvertent clerical error, and should not be considered a violation.[100] We find, however, that this failure, like other failures discussed above, is evidence of an apparently defective internal control system. This error understated Ohio Bell's total interstate revenue requirements by $136,000, according to the independent auditor.[101]

55. These errors suggest that Ameritech's internal controls apparently failed to function properly in multiple instances. As a result of such errors, it may be necessary to require adjustments to Ameritech's price cap indexes and take other remedial action depending upon the additional information we have directed Ameritech to submit.

[99] *Id.*
[100] *Id.* at 24.
[101] *October 12 Letter*, Ameritech Attachment at 2.

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AMERITECH - Summary of Apparent Violations

INTERSTATE REVENUE REQUIREMENT
OVERSTATEMENT FOR THE AUDIT PERIOD (See Note)
($000)

COMMISSION FINDING	CARRIER	TOTAL	COMMON LINE	OTHER INTERSTATE ACCESS ELEMENTS
1. Inclusion of equity component in lead/ lag basic study to determine the CWC allowance.	All	7,495	3,300	4,195
2. Settlement lag failed to reflect the 2 year "window" for NECA pool settlements.	Illinois		Unknown	
2. Settlement lag failed to reflect the 2 year "window" for NECA pool settlements.	Ohio		Unknown	
2. Settlement lag failed to reflect the 2 year "window" for NECA pool settlements.	Wisconsin		Unknown	
3. Mismatch in determination of suscriber revenue lags.	Illinois	343	130	213
4. Subscriber line charge revenues were not included in developing the customer revenue lag for CWC.	Wisconsin	435	199	236
5. Used obsolete revenue lag study.	Michigan	(494)	(241)	(253)
6. Used average bank balances instead of minimum bank balances to calculate CWC.	All	425	190	235

AMERITECH - Summary of Apparent Violations

**INTERSTATE REVENUE REQUIREMENT
OVERSTATEMENT FOR THE AUDIT PERIOD (See Note)
($000)**

COMMISSION FINDING	CARRIER	TOTAL	COMMON LINE	OTHER INTERSTATE ACCESS ELEMENTS
7. Included end user revenue as access revenue in calculating CWC.	Michigan	1,530	745	785
8. Used lead/lag factors based on old or nonexistent studies.	Indiana	3,250	1,389	1,861
9. Use of obsolete lead/lag study.	Indiana		Unknown	
10. Use of obsolete lead/lag study. Withdrew a new study because of unfavorable result.	Wisconsin	2,903	1,297	1,606
11. Various errors in treatment of revenue in lead/lag studies.	All		Unknown	
12. Did not use prime rate in calculating AFUDC.	All		Unknown	
13. Used direct assignment of IO/T costs where not allowed.	Michigan	228	(3,495)	3,723
14. Lack of documentation in input to the cable and wire facilities allocator.	Michigan	(778)	353	(1,131)
15. Reliance on obsolete circuit equipment study (CES).	Indiana		Unknown	

Attachment B
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AMERITECH - Summary of Apparent Violations

INTERSTATE REVENUE REQUIREMENT
OVERSTATEMENT FOR THE AUDIT PERIOD (See Note)
($000)

COMMISSION FINDING	CARRIER	TOTAL	COMMON LINE	OTHER INTERSTATE ACCESS ELEMENTS
16. Erroneously reported PICC revenues to common line.	Indiana	0	(486)	486
16. Erroneously reported PICC revenues to common line.	Michigan	0	(1,607)	1,607
17. Incorrect data month estimates.	Indiana	0	(110)	110
18. Double booking of adjustment.	Michigan	1,000	1,000	0
19. Incomplete correction of loop counts.	Michigan	(2,659)	(2,161)	(498)
20. Failed to report certain billing adjustments to NECA.	Michigan	(127)	(127)	0
21. Incomplete public telephone revenue adjustments.	Ohio	(136)	(105)	(31)

Note: Overstated expenses are indicated by positive amounts.
Understated expenses are indicated by negative (parentheses) amounts.
Overstated revenues are indicated by negative (parentheses) amounts.
Understated revenues are indicated by positive amounts.

Before the
Federal Communications Commission
Washington, D.C. 20554

ET Docket No. 93-235

In the Matter of

Amendment of Parts 15 and 90 of the Commission's Rules to Provide Additional Frequencies for Cordless Telephones — RM-8094

REPORT AND ORDER

Adopted: April 5, 1995; Released: April 10, 1995

By the Commission:

I. INTRODUCTION

1. By this action, we are amending Parts 15 and 90 of the rules to provide additional frequencies in the 44 and 49 MHz bands for the operation of cordless telephones. This action will significantly improve the operation and convenience of cordless telephones, making it easier for consumers to obtain improved wireless access to telephone service. In particular, the additional channels we are providing will relieve channel crowding and congestion and reduce interference to existing cordless telephone service operating under Part 15 of our rules.[1]

II. BACKGROUND

2. A cordless telephone is a two-way low power radio system that is used for voice communications on the public switched telephone network (PSTN). A cordless telephone consists of a "base" unit that connects to the PSTN and a "remote" handset. The base unit and the handset are connected by a radio link that eliminates the handset cord of the standard telephone, thus allowing the user to move away from the base unit while carrying on a telephone conversation. The radio frequency components of cordless telephones operate under the provisions of Part 15 of the Commission's rules. There are ten pairs of frequencies available at 46 and 49 MHz for cordless telephones.[2] Sales and use of cordless telephones have grown steadily over the years, and it is estimated that more than 60 million cordless telephones are currently in use.[3]

3. On August 20, 1992, the Personal Communications Section of the Telecommunications Industry Association (TIA) submitted a Petition for Rule Making (RM-8094) seeking additional frequencies for cordless telephones. TIA stated that additional cordless telephone channels are needed to relieve channel-crowding problems, due to the widespread popularity of these devices. It also noted that the congestion problem is compounded by the fact that five of the existing ten channels are available for other Part 15 low power transmitters such as baby monitors.[4] TIA suggested that an additional 15 channel pairs using 30 frequencies near 44 and 49 MHz be made available for cordless telephone use.

4. On August 20, 1993, the Commission adopted a *Notice of Proposed Rule Making* (*Notice*) in this proceeding.[5] In the *Notice*, the Commission proposed to make available for cordless telephone use the additional 15 channel pairs suggested by TIA.[6] These frequencies are currently allocated to the Private Land Mobile Radio Service (PLMRS). The Commission indicated that since PLMRS use of this spectrum is relatively light and/or is typically located away from residential areas, cordlesstelephones could share these frequencies.[7] The Commission also proposed to require that cordless telephones operating on these new frequencies incorporate a mechanism for automatically monitoring and preventing activation on any occupied channel. The proposed frequencies in the 44 MHz band are located in the intermediate frequency (IF) pass-band of TV receivers.[8] The Commission therefore proposed to designate the lower band, *i.e.*, 44 MHz, for base units in order to minimize interference to TV broadcasting and not to require any specific pairing of frequencies. It further requested comment on certain other technical aspects associated with cordless telephone operation. Namely, it requested comment on whether to continue to allow cordless telephone operating frequencies to be offset from the center of

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[1] The frequencies for operation of cordless telephones are set forth in Section 15.233 of the rules, 47 C.F.R. §15.233.

[2] *See Report and Order*, GEN Docket No. 83-325, 49 FR 1512 (1984). *See also* 47 CFR § 15.233. The 46 MHz and 49 MHz frequencies used by cordless telephones under Part 15 are allocated to the Federal Government for fixed and mobile services.

[3] *See Notice of Proposed Rule Making* in GEN Docket No. 93-235, 8 FCC Rcd. 6782 at para. 3 and Cobra at p. 1, November 18, 1993.

[4] *See* 47 CFR Section 15.235. In addition, all ten cordless telephone channels may be used by extremely low power transmitters pursuant to 47 CFR Section 15.209; however, such transmitters are unlikely to cause interference to cordless telephones.

[5] *See Notice of Proposed Rule Making* in GEN Docket No. 93-235, 8 FCC Rcd. 6782.

[6] Specifically, the Commission proposed use of the following frequencies in MHz: 43.72, 43.74, 43.82, 43.84, 43.92, 43.96, 44.12, 44.16, 44.18, 44.20, 44.32, 44.36, 44.40, 44.46, 44.48, 48.76, 48.84, 48.86, 48.92, 49.02, 49.08, 49.10, 49.16, 49.20, 49.24, 49.28, 49.36, 49.40, 49.46, and 49.50.

[7] The 30 frequencies proposed for new cordless channels are allocated to the PLMRS for use by the Land Transportation, Petroleum and Forest Products Radio Services. According to our license data base, there are fewer than 60 assignments, covering less than 1000 mobile units, on each of the proposed 44 MHz frequencies and fewer than 260, covering 3400 mobile units, on each of the proposed 49 MHz frequencies. We note that cordless telephones use extremely low power and are likely to cause interference only when located in close proximity to a PLMRS receiver. (The emission level allowed under our rules for cordless telephones equates to about 25 microwatts, *see* 47 C.F.R. §15.233.) It appears that most PLMRS operations on these frequencies are transient or located away from residential areas where cordless telephones are typically located.

[8] TV receivers employ an IF amplifier having a band-pass of 41 to 47 MHz.

cordless telephone channels and whether 20 kHz is the appropriate bandwidth for operation on the new frequencies.[9]

5. Seventeen parties submitted comments and/or reply comments inresponse to the *Notice*.[10] The commenting parties representing cordless telephone manufacturers agree that there is a need for additional cordless telephone frequencies to relieve channel congestion. Some of these parties raise concerns with respect to specific technical requirements and implementation procedures. Other parties, generally representing land mobile and broadcast interests, express concern about potential interference problems and question the need for additional cordless telephone spectrum.

III. DISCUSSION

New Cordless Telephone Frequencies

6. In the *Notice*, we tentatively found it in the public interest to make additional frequencies available for cordless telephones in the 44 and 49 MHz regions of the spectrum. In this regard, we observed that the existing ten cordless telephones channels have become very congested and that there continues to be strong demand for low-priced cordless telephones that use 46/49 MHz technology. We therefore proposed to make the 30 frequencies suggested by TIA available for cordless telephones under Part 15. We requested comment on the suitability of the proposed 44 and 49 MHz frequencies for cordless telephone use, particularly with regard to the potential for interference with PLMRS operations and with intermediate frequencies (IF) in broadcast TV receivers. In particular, with regard to TV receivers, we requested comment on whether the proposed 44 MHz frequencies pose a significantly greater interference risk to the reception of television broadcasting than the 46 MHz frequencies already used by cordless telephones.

7. American Telephone and Telegraph Company (AT&T), Cobra Electronics Corporation (Cobra), the Consumer Electronics Group of the Electronic Industries Association (EIA/CEG), the North American Foreign Trading Corporation (NAFTC), Radio Shack Division of Tandy Corporation (Radio Shack), Sony Electronics Inc. (Sony), TIA, Thomson Consumer Electronics (Thomson), and Uniden support our proposal to provide additional channels for 46/49 MHz cordless telephones. These parties submit that interference to existing cordless telephones is commonplace, particularly in congested urban areas, and that additional frequencies are needed to support continued growth in the use of cordless telephones. AT&T, NAFTC, Radio Shack, TIA, and Uniden argue that the proposed frequencies are the most suitable for augmenting the channels available for cordless telephones due to the proximity of the proposed frequencies to the existing cordless telephone frequencies. They point out that this will permit the economical design of cordless telephones that use both the existing and the new frequencies.

8. AT&T, TIA and Uniden state that the proposed frequencies can be used by cordless telephones without impairing PLMRS operations. They point out that cordless telephones operate at very low power, typically about 25 to 30 microwatts. They argue that this will generally prevent cordless telephones from interfering with PLMRS operations that operate at much higher powers of 25 to 50 watts for mobiles and 300 watts for base stations. TIA argues that a PLMRS system designed to be reliable in the presence of ambient background noise, such as vehicle ignition systems, should not be adversely affected by cordless telephones. Uniden states that when the separation distance between a cordless telephone and the PLMRS radio is greater than 50 to 100 feet, the man-made radio noise from automotive electrical systems and other sources will typically be greater than the received energy from a cordless telephone. Uniden also submits that PLMRS usage is either non-existent or very sparse in most parts of the country. AT&T further indicates that, under Part 15, cordless telephones may not cause interference with authorized services and must cease operation upon notification that harmful interference exists. Uniden, as a manufacturer of products that operate under both Part 15 and Part 90, states that it has stopped production of all Part 90 equipment that operates in the proposed bands. Uniden indicates that the purchasing trend for this type of equipment has shifted to higher frequency bands that employ more sophisticated trunking technology.

9. EIA/CEG, Sony, TIA and Thomson state that the additional cordless telephone channels are needed and that use of these channels would not be expected to cause interference to television receivers. They state that interference to television receivers can only occur when cordless telephones are used in very close proximity to the TV or VCR. Sony states that, as a manufacturer of both cordless telephones and TV sets, it fully supports the addition of the 15 new channels to the existing 10 channel cordless telephone service and believes that the additional channels will have no substantial detrimental effect on current television receivers. It also points out that current instruction manuals for Sony cordless telephones already include instructions to relocate the base unit away from the television receiver if any interference is detected. EIA/CEG and Thomson also believe that a simple cautionary note in the instruction manuals of cordless telephones would be sufficient to avoid such interference. In addition, EIA/CEG and Uniden both support limiting the 44 MHz frequencies to cordless base stations as a means of minimizing interference to TV reception.

10. American Petroleum Institute (API), Forest Industries Telecommunications (FIT), Industrial Telecommunications Association (ITA) and Utilities Telecommunications Council (UTC) oppose use of 44/49 MHz

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[9] *See* 47 CFR Section 15.233. The original rules for cordless telephones required each channel to be centered in a 20 kHz bandwidth. The Commission subsequently amended the rules to permit manufacturers to place two (or more) signals inside the 20 kHz bandwidth by narrowing signals to 10 kHz and offsetting them from the center of the channel. Thus, a manufacturer could design equipment that divided the existing ten channels into twenty channels. *See Report and Order*, GEN Docket No. 89-626, 6 FCC Rcd 4434 (1991). TIA and Uniden America Corp. (Uniden) submitted Petitions for Reconsideration of the "channel offset" rule, requesting that we reverse our decision to allow offset channel operation. In the *Notice*, the Commission indicated that it would address the matter of channel offsets for both the existing and proposed cordless telephone frequencies concurrently, in this proceeding, so that its rules will be consistent. It further stated that it would address the TIA and Uniden petitions in the context of that decision.

[10] Appendix B contains a list of those filing comments.

PLMRS frequencies by cordless telephones based on interference concerns. API, FIT, and UTC argue that cordless telephones have the potential to interfere with PLMRS users who have a need for reliable, around-the-clock and interference-free communications, especially in the event of a public emergency. API, FIT and UTC state that the proposed new 44/49 MHz frequencies are not "lightly-used" and that there is substantial use of these frequencies in and around many major metropolitan areas. API, FIT and UTC argue that the needs of cordless telephone users already can be met by cellular telephones, personal communications services and Part 15 operations in other bands. UTC states that our refarming initiative will make the proposed frequencies available for licensing to almost all private radio services. API expresses concern that if a cordless telephone operating on the new frequencies were to emit certain audible or sub-audible tones it might inadvertently capture a PLMRS mobile relay transmitter, causing the wide area retransmission of cordless telephone conversations over PLMRS systems. In response, AT&T and TIA state that API's claim that tones from cordless telephones could seize PLMRS transmitters and retransmit telephone conversations is groundless. They explain that according to Part 15 rules, cordless telephones using the new frequencies must use digital security coding and therefore will not use guard tones for signalling.

11. API, FIT and UTC state that interference to cordless telephones from PLMRS operations could be severe.[11] They caution that even though the Part 15 rules provide that cordless telephones must accept interference, consumers do not understand the nuances of the Commission's rules and could expect PLMRS operators to respond to interference complaints. FIT states that it is not realistic to expect the Commission to enforce the non-interference status of cordless telephones. Similarly, John C. Thomas expresses concern that the burden of eliminating interference will be placed on Part 90 licensees. The American Radio Relay League (ARRL) also expresses concern with respect to the susceptibility of cordless telephones to interference. While ARRL does not oppose the allocation of additional frequencies for cordless telephones, it does suggest certain actions that we could take to minimize interference complaints from new cordless telephone users.[12]

12. Association for Maximum Service Television and Public Broadcasting Service (MSTV and PBS), in joint comments, submit that alternative spectrum should be used for cordless telephones. MSTV and PBS state that use of the 44 MHz band for cordless telephone operation would result in harmful interference to TV reception. MSTV and PBS acknowledge, however, that the radius of potential interference extends only about 3 meters from the cordless telephone base station. They recommend that if we decide to allow use of 44 MHz frequencies by cordless telephones, we should: 1) require a visible warning on the cordless telephones packaging that explains the interference potential, and 2) require cordless telephone operators to resolve any interference problems.

13. Zenith opposes the proposed use of the 44 MHz band for cordless telephones and believes that no rule should be finalized until the television interference issues can be thoroughly analyzed. Zenith states that current TV receivers are 10 to 100 times more susceptible to interference from cordless telephones operating on these frequencies than those operating on the existing frequencies. In addition, Zenith believes that products equipped with an intermediate frequency pass-band (IF) television interface to solve cable compatibility requirements will present an additional concern with respect to potential IF interference on the proposed cordless telephone frequencies. Zenith also states that the proposed instructions to purchasers of cordless telephones may help them avoid interference with their own television receivers. However, Zenith contends that the proposed instructions will not be able to prevent interference in the multi-family environment and does not believe that any instructions could be crafted to eliminate such interference.

14. In *ex parte* comments, filed February 23, 1994, TIA submits that Zenith's own data shows that concerns regarding TV interference are considerably overstated. TIA argues that the Zenith data, when considered together with well-known relationships between field strength and distance, show that a cordless telephone base unit operating on the "worst-case" proposed new frequency must be within about 2 feet of the television receiver in order to cause interference. Moreover, TIA states that the 20 dB difference in susceptibility between the proposed and existing frequencies (the factor of 100 noted by Zenith) is not significant because it translates to a difference of only about one foot in required separation distance.

15. *Decision.* As indicated above, 46/49 MHz cordless telephones are very popular and have achieved substantial penetration in American households. We continue to believe that there will be strong demand for cordless telephones that use this technology. In this regard, we note that in 1993, some 16 million additional 46/49 MHz cordless telephones were purchased by consumers in this country.[13] We are concerned that the channel crowding and congestion that have arisen in recent years because of the increasing popularity of these devices is now seriously affecting the quality of cordless telephone service. We therefore find that additional channels are needed for use by 46/49 MHz cordless telephones. While we believe that many consumers may eventually be attracted to alternative cordless telephone technologies and future personal communications services, we believe that the public should have a choice of many diverse products, including low-cost cordless telephones, to satisfy their communications needs.[14] We also believe that the proposed 44 and 49 MHz channels are the most desirable for augmenting the chan-

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[11] Using an example of a 100 watt PLMRS transmitter, FIT predicts that depending on the receiver sensitivity of the cordless telephone, users within a 60 mile radius of the transmitter will experience interference.

[12] ARRL suggests that: 1) The Commission should issue a public notice warning consumers of cordless telephones that they may be subject to interference, and that in such cases, no interference protection is offered, and that transmitter operators are not obligated to resolve any such interference; 2) Cordless telephone labels should emphasize the possible interference susceptibility of the device, and direct consumers to the manufacturer for suggested remedies; and 3) The Commission should request TIA and other standards organizations to develop standards for interference rejection for cordless telephones.

[13] *See* Electronic Industries Association's "1994 Electronic Market Data Book."

[14] For example, cordless telephones may operate at 915 MHz and 2450 MHz under Part 15 of the rules . In addition, we have set aside 20 MHz for unlicensed personal communications services (PCS).

nels available for cordless telephones. As indicated by several of the commenting parties, the proximity of these frequencies to the existing cordless telephone frequencies will permit the economical design of new devices that use both the new and existing frequencies.

16. We also find that cordless telephones operating on the frequencies we have proposed to make available for 46/49 MHz cordless telephones will not pose a significant risk of harmful interference to PLMRS operations. As indicated by TIA and Uniden, it can be expected that a PLMRS system designed to be reliable in the presence of ambient background noise, such as the noise from vehicle ignition systems, will not be adversely affected by the operation of cordless telephones. These telephones use extremely low power and thus are likely to be able to interfere with PLMRS communications only when located in close proximity to a PLMRS receiver. The risk of such interference can be further mitigated by requiring cordless telephones using the new frequencies to include a channel selection mechanism to prevent establishment of a link on an occupied frequency, as proposed in the *Notice* and discussed below. In any event, the Part 15 rules require that a cordless telephone cease operation if it is found to cause harmful interference.[15] Cordless telephone users will be responsible for eliminating any interference that might result from the operation of cordless telephones on the new frequencies.

17. We similarly are not persuaded that interference to cordless telephones from PLMRS operations is likely to be a serious problem that would make the proposed frequencies unsuitable for cordless telephone use. Notwithstanding the claims of API, FIT and UTC, it appears that PLMRS use of the proposed frequencies is very light to non-existent in most densely populated areas.[16] While we recognize that there are some cases where PLMRS operations are located in or very nearby more densely populated areas, in most such areas there are few or no PLMRS operations present. Even where PLMRS operations are present, such operations are not active all the time and do not use all of the proposed new frequencies. Moreover, as indicated by Uniden, the trend in new PLMRS equipment is towards products that operate in higher frequency bands and employ more sophisticated trunking technologies. It also is extremely unlikely that all 15 of the proposed channel pairs would be occupied by PLMRS communications at the same time in an area where those frequencies were being used by PLMRS. The automatic channel selection feature of the cordless telephone would first choose an unoccupied pair of frequencies. If a PLMRS communication were subsequently initiated on the selected channel, the cordless telephone user could simply switch to another unoccupied channel. We recognize, as raised by UTC, that our refarming proceeding may ultimately result in the new cordless telephone frequencies also being available for use by a wide variety of non-commercial users.[17] We believe, however, that the trend for PLMRS users to operate on higher frequencies will keep the overall number of land mobile users on these frequencies quite low.

18. We further find that cordless telephone use of the 44 MHz band is compatible with the operation of broadcast TV receivers. The record indicates that the potential for interference between a TV receiver and a cordless telephone is very low. We do not find that the potential for interference to TV receivers caused by cordless telephones operating on these new frequencies would be substantially greater than that of existing cordless telephones. At most, it appears that the potential for interference is limited to cases where a cordless telephone transmitter is located within a few feet of the TV receiver. We believe instances of such interference can be reduced by simply not locating a cordless telephone close to a TV set. Nevertheless, we believe that a cautionary note to the consumer explaining the possible need to move the cordless telephone away from the television receiver, as suggested by some parties, is appropriate. Therefore, we will require that manufacturers or suppliers of cordless telephones using the new frequencies include information in their instruction manual on potential interference to TV receivers. This information should indicate that: 1) some cordless telephones operate at frequencies that may cause interference to nearby TVs and VCRs; 2) to minimize or prevent such interference, the base of the cordless telephone should not be placed near or on top of a TV or VCR; and, 3) if interference is experienced, moving the cordless telephone farther away from the TV or VCR will often reduce or eliminate the interference. Accordingly, we are making the 30 frequencies in the 44 MHz and 49 MHz bands proposed in the *Notice* available for cordless telephone use, subject to the conditions and operating requirements set forth herein.

Automation Channel Selection Requirement

19. In the *Notice*, we proposed to require that cordless telephones using the new frequencies include a mechanism to avoid causing interference to the PLMRS. Specifically, we proposed to require that cordless telephones using these frequencies incorporate an automatic channel selection mechanism that will prevent establishment of a link on an occupied frequency. We invited comment as to whether there is a need for more specific requirements. We also invited comment as to whether we should require any specific information to be filed with equipment authorization applications to demonstrate compliance with this requirement.

20. AT&T, Radio Shack, TIA, and Uniden support our proposal to require cordless telephones using the new frequencies to incorporate an automatic channel selection mechanism. They state that such a mechanism is adequate to reduce the possibility of interference to PLMRS operations. They also oppose adoption of more specific requirements, arguing that the proposal set forth in the *Notice* would allow manufacturers the flexibility to implement the requirement in a manner that best suits the designs of their equipment. To demonstrate compliance with the automatic channel selection requirement, TIA recommends that a manufacturer include a description of its automatic channel selection mechanism with its application for equipment authorization.

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[15] *See* 47 CFR Section 15.5.
[16] *See* footnote 7, *supra*.
[17] *See Notice of Proposed Rule Making*, PR Docket No. 92-235, 7 FCC Rcd 8105 (1992).

21. UTC states that if cordless telephones are allowed to operate on the proposed frequencies, we should adopt specific requirements to avoid interference. UTC supports the incorporation of an automatic channel selection mechanism and adds that the monitoring should take place prior to transmitter activation. It also suggests that we increase the attenuation requirements for off-channel signals and require manufacturers to design their cordless telephones in a way that makes it difficult for end users to tamper with the power output levels. Cobra agrees in principle with the proposal for an automatic channel selection requirement, but is concerned that it will preclude the sale of single channel telephones. It suggests that we consider modifying our proposal to include a combination of both pre-scanning and real time scanning. Cobra also believes that the requirement as proposed is too vague and prefers that specific design requirements be adopted.

22. API states that the proposed automatic channel selection requirement fails to protect either land mobile operations or cordless telephone users. API states that this proposal does not take into account the mobility of PLMRS users and the fact that PLMRS communications can be intermittent. API argues that a vehicular PLMRS unit will not be detected when it is out of range of the cordless telephone but, as it moves into range of the cordless device, its higher power will interfere with the cordless telephone as well as receive interference from the cordless telephone. Additionally, API argues that if the cordless telephone operates on an inactive PLMRS channel and a land mobile system subsequently transmits on that same channel, then either the cordless telephone conversation would be disrupted or the reliability of the land mobile transmission would be compromised. API also states that the proposal fails to properly address whether monitoring should be undertaken at both the base unit and handset or in only one of the units.

23. In its reply comments, TIA disagrees with API that the automatic channel selection requirement does not account for mobility and temporary inactivity of PLMRS operations. TIA counters that a cordless telephone will detect the presence of an approaching mobile transmitter, even if it is intermittently active, well before the mobile is near enough to receive a signal from the low power cordless telephone. Additionally, TIA states that a PLMRS system designed for high reliability should be able to operate in the presence of a cordless telephone signal even if the cordless telephone were to remain on the channel. With regard to temporary inactivity, TIA explains that if a PLMRS mobile is within range of its base station, then the cordless telephone will detect the base station transmission and avoid the channel. TIA also responds to API's argument that the proposal fails to properly address whether monitoring is to be conducted at the base unit and handset or in only one of the units. In particular, TIA states that the base unit will check for occupancy on both the 44 and 49 MHz frequencies before establishing a communications link. It further explains that because of the close proximity of the cordless handset to its base, and the simplex operation of the PLMRS transceivers, the handset will not be able to establish a link on a 44 or 49 MHz frequency in use by a PLMRS transceiver.

24. *Decision.* As discussed above, we believe that the potential for interference from cordless telephone operations on the new frequencies to PLMRS users is very low. Nevertheless, given the likelihood that cordless telephone use could become widespread on these frequencies, we believe it is necessary to provide additional safeguards to protect PLMRS operations. Accordingly, we will require that cordless telephones using the new frequencies must employ a mechanism to avoid causing interference to PLMRS operations. Cordless telephones operating on the new frequencies will be required to incorporate an automatic channel selection mechanism that will prevent establishment of a link on any occupied frequency. In response to API's concern, we are clarifying that the automatic channel selection mechanism must prevent establishment of a link if either the base transmission frequency or the handset transmission frequency is occupied. We recognize that all automatic channel selection mechanisms may not prevent interference to the cordless telephone user if a PLMRS transmitter begins operation after the cordless telephone connection is established. However, Section 15.5(b) of our rules require that users accept such interference. As such, if a cordless telephone conversation is interrupted by a PLMRS user, the conversation may be continued by switching to another available channel. We also do not find that it is necessary or desirable to impose more specific design standards for the automatic channel selection requirement. We believe that it is important to allow manufacturers the flexibility to implement this requirement in a manner that best suits the design of their equipment. We agree with TIA that a manufacturer should include a description of its automatic channel selection mechanism with its application for equipment authorization. Therefore, we will require that a statement describing the means and procedures used to achieve automatic channel selection shall be included in any application for equipment authorization of a cordless telephone using the new frequencies. We note that we currently require a similar statement with regard to security coding features on cordless telephones.[18]

25. We recognize Cobra's concern that the automatic channel selection proposal appeared to exclude single-channel cordless telephones. We do not intend to prohibit single-channel telephones from using the new frequencies, provided that such units incorporate a mechanism to avoid causing interference to PLMRS operations. This mechanism must prevent establishment of a link on any occupied frequency. We are not adopting UTC's suggestions that we increase the requirements for attenuation of spurious emissions from cordless telephones operating on the new frequencies and that we require that cordless telephones be designed so as to make it difficult for end users to tamper with the power output levels. The existing spurious emissions limits for cordless telephones are already so low that it is extremely unlikely that spurious emissions from these devices could cause interference. We also are unaware of any existing cordless telephones that allow the user to easily modify the output power.

[18] *See* 47 CFR 15.214.

Frequency Pairing

26. In the *Notice*, we proposed not to pair the new cordless telephone frequencies.[19] We did, however, propose to restrict the use of the lower frequencies at 44 MHz to cordless telephone base units in order to minimize potential interference to television broadcasting.

27. Cobra, Radio Shack and TIA support our proposal not to pair the frequencies. They indicate that this would allow any new base transmitter frequency to be used with any new handset transmitter frequency and would help avoid interference to PLMRS. TIA and Uniden support the proposal to use the lower frequencies for cordless telephone base units. Uniden, for example, states that, although it does not perceive interference to television receivers to be a significant problem, it supports the designation of the lower frequencies at 44 MHz for base units. No parties opposed either of these proposals.

28. *Decision.* We continue to believe that frequency pairing would unnecessarily constrain the ability of cordless telephones to select frequencies that avoid interference to the PLMRS. Accordingly, we will not designate the new frequencies into specific frequency pairs. We will also designate the lower frequencies at 44 MHz for base units so as to minimize potential interference to television broadcasting.

Channel Offsets and Bandwidths

29. The original rules for cordless telephones required each channel to be centered in a 20 kHz bandwidth. The Commission subsequently proposed and amended the rules in GEN Docket No. 89-626 to permit manufacturers to place two (or more) signals inside the 20 kHz bandwidth by narrowing signals to 10 kHz and offsetting them from the center of the channel.[20] Thus, a manufacturer could design equipment that divided the existing ten channels into twenty channels. This became known as the "channel offset" rule. TIA and Uniden submitted petitions requesting reconsideration of the offset channel rule.[21] In its petition for additional cordless telephone frequencies, TIA references its petition for reconsideration of the offset channel rule and states that offset channels should not be used for the proposed new frequencies.

30. In the *Notice*, we stated that the matter of channel offsets should be considered concurrently for both the existing and proposed new cordless telephone channels so that our rules for cordless telephone rules would be consistent. Accordingly, we held TIA's and Uniden's petitions in abeyance pending our determination on providing additional cordless telephone channels in this proceeding. In particular, we invited comment as to whether 20 kHz is the appropriate bandwidth for the new frequencies.

31. All of the parties commenting on this issue support 20 kHz as the most appropriate channel bandwidth for cordless telephones and request that the channel offset rule be reconsidered. AT&T and Cobra, for example, support not allowing channel offsets on either the new frequencies or the original frequencies. AT&T agrees that there should be a uniform channel bandwidth of 20 kHz for cordless telephones using both the existing and the new frequencies. TIA encourages us to grant its Petition for Reconsideration in GEN Docket No. 89-626 concurrently with taking action on the instant proceeding. It states that 20 kHz is the appropriate bandwidth for the FM transmission format used by cordless telephones. Uniden states that use of channel offsets will cause significant interference to existing cordless telephones service, and supports abolishing the channel offset rule for the existing as well as the proposed new cordless telephone channels. Uniden also supports 20 kHz as the appropriate channel bandwidth for the new and existing frequencies.

32. *Decision.* When we adopted rules permitting channel offset, we were seeking to provide some relief from overcrowding of the cordless telephone channels. At that time, however, additional frequencies for cordless telephones near the existing 46/49 MHz cordless telephone bands were not being considered. The 15 additional channels we are providing herein will more than double the number of frequencies available for cordless telephone use. With this increase in the number of available channels, we now agree with the industrial parties that the added potential for cordless telephone interference from offset channel operation makes such operation less desirable. Accordingly, we are granting the Petitions of Reconsideration of TIA and Uniden in GEN Docket No. 89-626 with regard to the offset channel rule. We are amending the rules to eliminate the offset channel authority and provide for 20 kHz operation on both the existing and new cordless telephone channels.

OTHER MATTERS

33. In the *Notice*, we proposed to make these rules effective 30 days after publication of the Report and Order of this proceeding in the Federal Register. We also stated that we did not plan to permit modification (*e.g.*, change of crystals) of existing cordless telephones to operate on the new frequencies due to the need to include automatic channel selection capability to avoid interference to the PLMRS.

34. Cobra and NAFTC request that the effective date be delayed for six to twelve months after the adoption of the *Report and Order*, rather than the 30 days proposed in the *Notice*. These parties would like a longer transition period to be able to reduce their inventories of existing cordless telephones. They state that due to long production lead times of 6 to 12 months, companies have to irrevocably commit to production quantities several months in advance and therefore always tend to have high inventories. AT&T and Uniden oppose delaying the effective date as suggested by Cobra and NAFTC. For example, AT&T states that there is no reason to limit the public's ability to benefit

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[19] That is, we proposed not to require that a specific cordless handset frequency be used only with a specific cordless base frequency and vice versa.

[20] *See Notice of Proposed Rule Making*, GEN Docket No. 89-626, 5 FCC Rcd 309 (1990), and *Report and Order*, GEN Docket No. 89-626, 6 FCC Rcd 4434 (1991).

[21] In their Petitions for Reconsideration, TIA and Uniden argue that offset channel operation would require narrowing of the FM signals used by current cordless telephones. They contend that this will degrade the FM capture ratio, which in turn will reduce the ability of cordless telephone receivers to reject interference. TIA submitted a detailed technical analysis showing that the increased vulnerability of cordless telephone receivers to interference would negate any increase in spectrum efficiency gained by dividing the current 20 kHz channels.

from the provision of additional channels as soon as manufacturers are able to produce new equipment. No parties objected to our proposal to prohibit modification of existing cordless telephones to operate on the new frequencies.

35. *Decision.* We disagree with those parties that suggest implementation of the new cordless telephone channels should be delayed. We do not find that the public interest would be served by delaying the benefits flowing from the availability of these new channels, merely to allow importers and manufacturers to deplete their existing inventories. Accordingly, the new rules will be effective 30 days after publication of this Report and Order in the Federal Register. We are also adopting our proposal to prohibit modification (*e.g.;* change of crystals) of existing cordless telephones to operate on the new frequencies. This will ensure that all operations on the new frequencies will include an automatic channel selection capability to avoid interference to the PLMRS.

IV. PROCEDURAL INFORMATION

36. *Regulatory Flexibility Analysis.* The analysis required by the Regulatory Flexibility Act of 1980, 5 U.S.C. Section 608, is contained in Appendix C.

V. ORDERING CLAUSES

37. Accordingly, IT IS ORDERED that Parts 15 and 90 of the Commission's rules ARE AMENDED as specified in Appendix A, effective 30 days after publication in the Federal Register. Furthermore, IT IS ORDERED that the Petitions for Reconsideration filed by the Telecommunications Industry Association and Uniden America Corporation in GEN Docket No. 89-626 ARE GRANTED with regard to the offset channel rule as described above. This action is taken pursuant to the authority contained in Sections 4(i), 302, 303(e), 303(f), and 303(r) of the Communications Act of 1934, as amended.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX A: Final Rules

A. Title 47 of the Code of Federal Regulations, Parts 15 and 90, are amended to read as follows:

PART 15 -- RADIO FREQUENCY DEVICES

1. The authority citation for Part 15 continues to read as follows:

AUTHORITY: Sections 4, 302, 303, 304, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 302, 303, 304, and 307.

2. Section 15.233 is amended by revising the section heading and paragraphs (b) and (d), to read as follows:

Section 15.233 Operation within the bands 43.71 - 44.49 MHz, 46.60 - 46.98 MHz, 48.75 - 49.51 MHz and 49.66 - 50.0 MHz.

* * * * *

(b) An intentional radiator used as part of a cordless telephone system shall operate centered on one or more of the following frequency pairs, subject to the following conditions:

(1) Frequencies shall be paired as shown below, except that channel pairing for channels one through fifteen may be accomplished by pairing any of the fifteen base transmitter frequencies with any of the fifteen handset transmitter frequencies.

(2) Cordless telephones operating on channels one through fifteen must: (i) incorporate an automatic channel selection mechanism that will prevent establishment of a link on any occupied frequency and (ii) the box or an instruction manual which is included within the box which the individual cordless telephone is to be marketed shall contain information indicating that some cordless telephones operate at frequencies that may cause interference to nearby TVs and VCRs; to minimize or prevent such interference, the base of the cordless telephone should not be placed near or on top of a TV or VCR; and, if interference is experienced, moving the cordless telephone farther away from the TV or VCR will often reduce or eliminate the interference. A statement describing the means and procedures used to achieve automatic channel selection shall be provided in any application for equipment authorization of a cordless telephone operating on channels one through fifteen.

Channel	Base Transmitter (MHz)	Handset Transmitter (MHz)
1	43.720	48.760
2	43.740	48.840
3	43.820	48.860
4	43.840	48.920
5	43.920	49.020
6	43.960	49.080
7	44.120	49.100
8	44.160	49.160
9	44.180	49.200
10	44.200	49.240
11	44.320	49.280
12	44.360	49.360
13	44.400	49.400
14	44.460	49.460
15	44.480	49.500
16	46.610	49.670
17	46.630	49.845
18	46.670	49.860
19	46.710	49.770
20	46.730	49.875
21	46.770	49.830
22	46.830	49.890
23	46.870	49.930
24	46.930	49.990
25	46.970	49.970

* * * * *

(d) The fundamental emission shall be confined within a 20 kHz band and shall be centered on a carrier frequency shown above, as adjusted by the frequency tolerance of the transmitter at the time testing is performed. Modulation products outside of this 20 kHz band shall be attenuated at least 26 dB below the level of the unmodulated carrier or to the general limits in Section 15.209, whichever permits the higher emission levels. Emissions on any frequency more than 20 kHz removed from the center frequency shall consist solely of unwanted emissions and shall not exceed the general radiated emission limits in Section 15.209. Tests to determine compliance with these requirements shall be performed using an appropriate input signal as prescribed in Section 2.989 of this Chapter.

* * * * *

PART 90 -- PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 continues to read as follows:

AUTHORITY: Sections 4, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. Sections 154, 303, and 332, unless otherwise noted.

2. In Section 90.65, the table in paragraph (b) is amended, to add a new limitation "44" to fifteen frequencies, and a new paragraph (c)(44) is added, to read as follows:

Section 90.65 Petroleum Radio Service.

* * * * *

(b) *Frequencies available.* * * * * *

Petroleum Radio Service Frequency Table

Frequency or band	Class of station(s)	Limitations
***	***	***
Megahertz:		
***	***	***
48.76	do	10, 44
***	***	***
48.84	do	10, 44
48.86	do	10, 44
***	***	***
48.92	do	10, 44
***	***	***
49.02	do	10, 44
***	***	***
49.08	do	10, 44
49.10	do	10, 44
***	***	***

49.16	do	10, 44
***	***	***
49.20	do	10, 44
***	***	***
49.24	do	10, 44
***	***	***
49.28	do	10, 44
***	***	***
49.36	do	10, 44
***	***	***
49.40	do	10, 44
***	***	***
49.46	do	10, 44
***	***	***
49.50	do	10, 44
***	***	***

(c) * * *

(44) This frequency is also used on a secondary basis by cordless telephones under part 15 of this chapter.

* * * * *

3. In Section 90.67, the table in paragraph (b) is amended, to add a new limitation "38" to fifteen frequencies, and a new paragraph (c)(38) is added, to read as follows:

Section 90.67 Forest Products Radio Service.

* * * * *

(b) *Frequencies available.* * * * * *

Forest Products Radio Service Frequency Table

Frequency or band	Class of station(s)	Limitations

***	***	***
Megahertz:		
***	***	***
48.76	do	2, 38
***	***	***
48.84	do	2, 38
48.86	do	2, 38
***	***	***
48.92	do	2, 38
***	***	***
49.02	do	2, 38
***	***	***
49.08	do	2, 38
49.10	do	2, 38
***	***	***
49.16	do	2, 38
***	***	***
49.20	do	2, 38
***	***	***
49.24	do	2, 38
***	***	***
49.28	do	2, 38
***	***	***
49.36	do	2, 38
***	***	***
49.40	do	2, 38
***	***	***
49.46	do	2, 38
***	***	***

49.50	do	2, 38
***	***	***

(c) * * *

(38) This frequency is also used on a secondary basis by cordless telephones under part 15 of this chapter.

* * * * *

4. In Section 90.89, the table in paragraph (b) is amended, to add a new limitation "23" to fifteen frequencies, and a new paragraph (c)(23) is added, to read as follows:

Section 90.89 Motor Carrier Radio Service.

* * * * *

(b) *Frequencies available.* * * * * *

Motor Carrier Radio Service Frequency Table

Frequency or band	Class of station(s)	Limitations
***	***	***
Megahertz:		
***	***	***
43.72	do	4, 23
43.74	do	4, 23
***	***	***
43.82	do	4, 23
43.84	do	4, 23
***	***	***
43.92	do	5, 6, 23
***	***	***
43.96	do	5, 23
***	***	***

44.12	do	5, 23
***	***	***
44.16	do	5, 23
44.18	do	5, 23
44.20	do	5, 20, 23
***	***	***
44.32	do	5, 23
***	***	***
44.36	do	5, 6, 23
***	***	***
44.40	do	5, 6, 23
***	***	***
44.46	do	1, 23
44.48	do	1, 23
***	***	***

(c) * * *

(23) This frequency is also used on a secondary basis for cordless telephones under part 15 of this chapter.

* * * * *

APPENDIX B: Parties Filing Comments

1. American Petroleum Institute
2. American Radio Relay League, Inc.
3. American Telephone and Telegraph Company
4. Association for Maximum Service Television, Inc. and the Public Broadcasting Service (Jointly filed comments.)
5. Cobra Electronics Corporation
6. Consumer Electronics Group of the Electronic Industries Association
7. Forest Industries Telecommunications
8. Industrial Telecommunications Association, Inc.
9. North American Foreign Trading Corporation
10. Sony Electronics Inc.
11. Tandy Corporation, Radio Shack Division
12. Telecommunications Industry Association Mobile & Personal Communications Radio Section
13. John C. Thomas, AB8Z
14. Thomson Consumer Electronics, Inc.
15. Uniden America Corporation
16. Utilities Telecommunications Council
17. Zenith Electronics Corporation

APPENDIX C: Final Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. Section 603, an Initial Regulatory Flexibility Analysis was incorporated in the *Notice of Proposed Rule Making (NPRM)* in ET Gen Docket No. 89-235. Written comments on the proposals in the *NPRM*, including the Regulatory Flexibility Analysis, were requested. The following Final Regulatory Flexibility Analysis has been prepared:

A. *Need for and Objective of Rules:* There is a need for additional cordless telephone frequencies to relieve channel congestion and reduce interference to cordless telephones operating in the 46 MHz and 49 MHz bands. The Commission is establishing additional frequencies for cordless telephones. The existing rule provisions that these devices have been operating under are considered by manufacturers to be inadequate to meet the growing consumer demand for these devices. The objectives of the proposed rules are to improve the ability of cordless telephones to meet the needs of consumers and to promote more effective use of the radio spectrum.

B. *Issues Raised by the Public in Response to the Initial Analyses:* No commenting parties raised issues specifically in response to the initial regulatory flexibility analysis. The regulations being adopted in this *Report and Order* add new frequencies, in addition to retaining the existing frequencies, for cordless telephones. New restrictions, designed to prevent harmful interference to licensed radio services, are placed only on the use of the new frequencies. The regulations are technically and economically achievable without undue burden on any entity. Manufacturers are being given substantial flexibility on how to implement the new frequencies, including the option of continuing to manufacture, import and market cordless telephones presently operating under the existing regulations.

C. *Any Significant Alternative Minimizing Impact on Small Entities and Consistent with Stated Objectives:* We have reduced burdens wherever possible. The regulatory burdens we have retained are necessary to ensure that the public receives the benefits of reduced channel congestion while using cordless telephones, without causing interference to other licensed services. The Commission has considered all of the alternatives presented in this proceeding and has adopted standards that can be achieved by industry while still providing adequate protection to licensed service such as the Television Broadcasting Service, and the Private Land Mobile Radio Service. Alternatives that were considered include deleting all standards and restrictions, retaining the present regulations, adopting the regulations proposed in the *NPRM*, and adopting tighter standards than proposed. In addition, alternative frequencies, such as the availability of 900 MHz and 2 GHz frequencies, and the alternative in future personal communications services (PCS) were considered. In addition, methods of reducing interference to licensed services, such as the Private Land Mobile Radio Service and the Television Broadcast Service, such as monitoring before transmitting and allocating frequencies with the highest probability of not causing interference to the cordless telephone base unit, were also considered. We will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant impact on small entities.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

The BellSouth Telephone Operating Companies — AAD 93-148

ORDER TO SHOW CAUSE

Adopted: February 24, 1995; Released: March 3, 1995

By the Commission:

1. At the direction of this Commission, the National Exchange Carriers' Association, Inc. ("NECA") hired Ernst and Young to conduct an independent audit of carrier-reported adjustments to the Common Line ("CL") revenue pool for 1988 and the first quarter of 1989.[1] Our subsequent review of that Commission-mandated audit revealed apparent violations of our accounting rules and reporting requirements by BellSouth Telephone Companies ("BellSouth") during the audit period. These apparent violations may have continued beyond the period covered by the audit. This Order to Show Cause sets forth those apparent violations and directs BellSouth to show cause why this Commission should not: (1) issue a Notice of Apparent Liability for Forfeiture ("NAL") for apparent violation of Section 220(d) of the Communications Act of 1934, as amended;[2] (2) require BellSouth to adjust its price cap indexes; and (3) require BellSouth to improve its internal processes to bring them into compliance with Commission rules and orders.

2. Enforcing our accounting rules and reporting requirements is essential for the Commission to carry out its statutory obligations to ensure that rates for telecommunications services remain just and reasonable. Our ability to carry out these obligations is impaired if we cannot rely upon the information that carriers are required to submit about the costs of their operations and their allocations of those costs, or if those allocations are made improperly. As the telecommunications marketplace continues to diversify, with carriers providing more and more nonregulated services, our enforcement of accounting safeguards will become even more important if we are to continue to protect ratepayers from being overcharged for interstate services.

I. BACKGROUND

3. Our rules require the LECs, on a monthly basis, to report to NECA their revenue, expense and investment data. NECA uses these data to compute each LEC's monthly pool shares.[3] Because LECs do not have complete data available when they first report to NECA, the LECs initially report estimated data. In the following months, the LECs are required to reconcile their estimates with actual results. To ensure the accuracy of the reconciliation process and because even the best accounting systems sometimes fail to prevent errors, NECA procedures allow the LECs twenty-four months to reconcile and correct previously submitted data. Thus, in each monthly "settlement cycle," LECs report estimated data for the current month as well as adjusted data for the preceding twenty-four months.

4. In the December 1988 settlement cycle, certain LECs reported unusually large adjustments to the CL pool. Commission staff audited the larger of these adjustments and found that they appeared to have been encouraged by NECA Board members representing the BOCs and further found them apparently inconsistent with the Commission's rules. As a result, the Commission issued *Notices of Apparent Liability for Forfeiture and Orders to Show Cause* against the BOCs that filed these adjustments.[4] The Commission also issued a letter of reprimand to the NECA Board of Directors and required, *inter alia*, that NECA hire an independent auditor to perform a comprehensive audit of significant adjustments the BOCs reported to the CL pool for 1988 and 1989.[5]

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[1] NECA collects cost data, including revenue, expense and investment data, from all local exchange carriers ("LECs") on a monthly basis. These data are then used to develop LEC-specific revenue requirements which are designed to recover those LEC-incurred costs that are allocated to the interstate jurisdiction under our jurisdictional separations rules, 47 C.F.R. Part 36. The revenue requirement development process is called "pooling," because, initially, all LEC-submitted cost data are combined ("pooled") based on whether they are non-traffic sensitive (*e.g.*, CL) or traffic sensitive ("TS") in nature. Accordingly, NECA administers two revenue pools. Non-traffic sensitive, CL costs are pooled to develop CL revenue requirements, and TS costs are pooled to develop TS revenue requirements. The revenues required to recover CL costs are collected through (1) carrier common line charges billed to the interexchange carriers; (2) subscriber line charges billed to end users and other customers; and (3) surcharges assessed against special access customers. These charges are set forth in tariffs NECA prepares for pool members, primarily the smaller, independent LECs. Other LECs -- including the Bell Operating Companies ("BOCs") -- currently do not participate in the cost recovery pools and, instead, prepare their own access tariffs. As explained *infra*, however, the pools are calculated based on revenue data provided by all LECs, and revenue data reported to NECA by the large carriers will, therefore, affect the charges of pool members. Moreover, during the time period covered by the audit, our rules required all LECs to participate in the CL pool.

[2] 47 U.S.C. §220(d). The BellSouth operating companies are the South Central Bell Telephone Co. (SCB) and the Southern Bell Telephone and Telegraph Co. (SBT).

[3] 47 C.F.R. §69.605.

[4] *See, e.g.*, Southwestern Bell Telephone Co., *Notice of Apparent Liability for Forfeiture and Order to Show Cause*, 5 FCC Rcd 7179 (1990). The Commission subsequently entered into Consent Decrees with the carriers thus resolving these initial actions without determinations of liability. *See, e.g.*, Southwestern Bell Telephone Co., *Consent Decree Order*, 7 FCC Rcd 7692 (1992).

[5] Letter from Donna R. Searcy, Secretary, FCC, to Lawrence C. Ware, Chairman of the Board of Directors, NECA, 5 FCC Rcd 7183 (1990). The letter identified "significant adjustments" as individual adjustments of $100,000 or more that the BOCs had reported to the CL pool for 1988 and 1989 other than the adjustments that had been addressed in the Commission audit. The independent audit covered the fifteen data months from January 1, 1988 through March 31, 1989, after which time participation in the CL pool became voluntary and all BOCs left that pool. The letter, however, also required that the in-

5. NECA hired the public accounting firm of Ernst & Young to conduct the independent audit. Ernst & Young issued its report which NECA submitted to the Commission.[6] That report included numerous audit findings against the BOCs, including BellSouth; the conduct noted by Ernst & Young has a substantial impact on the CL pool as well as on the carriers' interstate telecommunications services customers. This is because NECA distributes access tariff revenue based on reported data. Moreover, since the reported adjustments to the CL pool involve misstatements or miscalculations of interstate costs and revenues historically used to develop the reporting carrier's access charges, and, after 1988, its price cap indexes, the reporting carrier's interstate access customers, as well as end users, are affected. Although the independent auditor's report addressed the effects of the BOCs' conduct only on the CL pool, Commission auditors are examining the effect on all interstate telecommunications services. Those of the independent auditor's findings that were directed against BellSouth and that warrant Commission action are the subject of our action here. These findings are summarized below. Attachment A provides the specific details of each finding, the Commission Rules that were apparently violated, and the companies' responses to those findings. Attachment B presents, in tabular form, a summary of the apparent violations and their revenue impacts as revealed by the record to date.

II. THE FINDINGS

6. Section 220(a) of the Communications Act grants to the Commission specific authority to "prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject [to the Act]...."[7] In turn, Section 220(d) authorizes the Commission to impose forfeitures on carriers who do not keep such accounts, records, and memoranda in the manner prescribed by the Commission. The findings in Attachment A appear to reveal conduct by the BellSouth carriers that violates Section 220 for the period that is the subject of the audit, namely, the period beginning January 1, 1988, and ending March 31, 1989.[8]

7. The independent auditor's findings that we address here involve the misstatement or miscalculation of some $6.2 million of interstate costs and revenues for the period from January 1988 through March 1989.[9] In the aggregate, these misstatements or miscalculations apparently benefited BellSouth to the detriment of the users of BellSouth's interstate services. FNN These misstatements or miscalculations shifted costs between or among access elements, thus apparently understating or overstating BellSouth's interstate revenue requirements for particular services. The seriousness of the misstatements is compounded here not only because of the net impact and the extent of understatements and overstatements, but also because of the scope and number of the errors or apparent violations and the fact that some of them may have continued to the date of this Order to Show Cause. The findings reveal the BellSouth carriers' apparent failure to maintain their accounts, records, and memoranda in the manner prescribed by the Commission. To the extent that this conduct has continued, it must seriously undermine the Commission's confidence that BellSouth's accounts accurately reflect Commission-mandated accounting practices and reveal the true and lawful costs of BellSouth's interstate services. Moreover, and as explained more fully below, the apparent rule violations and misstatements may very well have led BellSouth to compute price cap indexes that likely would require correction.

8. In the following paragraphs we describe the accounting irregularities that have led us to issue this Order to Show Cause.

A. Apparent Cash Working Capital Violations

9. The independent auditor found that BellSouth's calculation of cash working capital allowances apparently violated Commission rules.[10] These allowances are supposed to reflect the average amount of investor-supplied capital needed to fund carriers' day-to-day operations.[11] Each cash working capital allowance is added to a carrier's ratebase, thereby increasing the earnings the carrier is allowed. The BellSouth carriers calculate their cash working capital allowances based on lead-lag studies.[12] In computing cash

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dependent audit "include adjustments reported after [the BOCs] left the pool on April 1, 1989" since carriers were allowed to submit adjustments for up to twenty-four months following a particular data month. *Id.* As a result, the independent auditor examined reported CL pool adjustments through March 1991.

[6] The Ernst & Young audit report is hereafter referred to as the "*Adjustments Report.*" On February 11, 1993, the Commission concluded that this audit had complied with Commission directives and had been performed "with a high degree of skill and care," and that the independent auditor had "exercised sound professional judgment reflecting purposes of the [audit] and the information gathered during [its] course." *See* Letter from Donna R. Searcy, Secretary, FCC, to Robert A. McArton, Chairman of the Board of Directors, NECA, 8 FCC Rcd 1315 (1993).

[7] 47 U.S.C. §220(a).

[8] The apparent violations roughly fall into two categories for purposes of potential remedies. First, certain apparent violations found to fall outside the applicable limitations period for assessing forfeitures may, nevertheless, necessitate corrective action by the Commission. For example, the Commission may require adjustments to carrier price cap indexes to eliminate distortions caused by unlawful conduct. Second, other apparent violations, if found to be continuing or to have continued into the period covered by the limitations period, could support Notices of Apparent Liability for Forfeiture under Section 1.80 of the Commission's Rules, 47 C.F.R. §1.80, as well as support other remedies, such as price cap adjustments.

[9] These figures are based on estimates BellSouth provided to the independent auditor. *See* Letter from Bruce Baldwin, President, National Exchange Carrier Association, Inc., to Mr. Gerald P. Vaughan, Deputy Chief, Operations, Common Carrier Bureau, at BellSouth Attachment (Oct. 12, 1992) . Although those estimates encompass most of the independent auditor's findings, BellSouth did not provide interstate impact estimates of the impact of certain findings on interstate rates and revenue requirements.

[10] *Attachment A*, at 1.

[11] *See Attachment A*, at 3 n.17.

[12] *See Attachment A*, at 1-2. Lead-lag studies measure cash inflows and outflows in relation to the time service is rendered. Revenue and expense items that are received or paid before a service is rendered are considered "lead" items, and revenue and expense items that are received or paid after service is rendered are considered "lag" items. Lead-lag studies determine the number of days between receipt of revenues and payment of expenses.

working capital allowances, carriers are allowed to add minimum bank balances required by banks to the results obtained from these lead-lag studies. The independent auditor found that BellSouth improperly used average daily ledger balances, rather than minimum bank balances, which resulted in an overstatement of its total interstate revenue requirement of $4.8 million.[13]

B. Apparent Jurisdictional Separations Violations

10. Responsibility for regulating telephone services is shared between this Commission, which regulates interstate service, and state commissions, which regulate intrastate service. Carriers must use a process called jurisdictional separations to apportion their costs and revenues between the state and interstate jurisdictions. The separations procedures are set forth in Part 36 of our rules.[14] The independent auditor found that BellSouth apparently violated our rules in separating its investment in information origination/termination equipment and cable and wire facilities. According to the record,[15] these violations may have continued beyond the audit period.

C. Other Apparent Errors

11. The independent auditor also found a number of other apparent rule violations, including BellSouth's failure to provide adequate documentation to support numerous revenue and cost adjustments,[16] and its improper inclusion of presubscription revenues[17] for the predesignation of interexchange carriers[18] in Account 5081, Enduser revenue.[19] The independent auditor also noted that a BellSouth operating company incorrectly reported an accrual adjustment to NECA resulting in an overstatement of CL revenues which would apparently violate Section 69.605 of our rules.[20] As such errors and other violations accumulate, the data carriers report to NECA under Section 69.605 of our rules[21] and to us under Parts 43 and 65 of our rules[22] become increasingly unreliable. Although these errors may have no current impact on BellSouth's interstate rates, their number and scope persuade us to order BellSouth to show cause why its internal accounting and accounting-related processes should not generally be brought into compliance with Commission rules and orders.

III. DISCUSSION AND CONCLUSION

A. NALs

12. We find that the BellSouth carriers' conduct appears to be inconsistent with their statutory obligation to maintain their accounts, records, and memoranda as prescribed by the Commission. Carriers must accumulate, process, and report their financial and operating data in accordance with very specific Commission requirements because we rely on those data to help us ensure that interstate telephone rates are just and reasonable. Moreover, we cannot evaluate how well our accounting rules work if carriers disregard or misinterpret these rules. Therefore, where, as appears to be the case with BellSouth, carriers either intentionally violate our rules or fail to maintain the internal systems necessary to ensure compliance with those rules, we believe forfeitures may be appropriate under Section 220 of the Act.[23]

13. Section 220(d) of the Act authorizes us to impose forfeitures of up to $6000 per carrier per day for accounting-related violations.[24] Obviously, any violations that continued throughout the audit period and to the present could trigger substantial sums for the two BellSouth companies based on appropriate application of the statute of limitations. In order to make a determination about the amount of any forfeitures that may lie, we direct BellSouth to state when the conduct described in paragraphs 8 through 10 and detailed in Attachment A ceased, if ever, and otherwise show cause why notices of apparent liability pursuant to section 1.80 of the Commission's rules should not issue.[25] BellSouth's response should include a discussion of the appropriate application of the prescribed limitations period.[26] BellSouth's response also should identify any mitigating circumstances we should consider in determining forfeiture amounts.[27]

B. Adjustments to Price Cap Indexes

14. As indicated above, BellSouth did not provide estimates of the impact on interstate services rates and revenue requirements of certain conduct described in the independent auditor's findings.[28] So that we may assess the full impact of BellSouth's conduct, we order the BellSouth carriers to estimate the interstate impact of each of these findings, and to file those estimates with the Commission. This filing shall include estimates of the effect of each of the additional findings on BellSouth's CL, TS, special access, billing and collection, and interexchange costs and

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13 *Attachment A*, at 2.
14 47 C.F.R. Part 36.
15 *Attachment A*, at 4-5.
16 *Id.*, at 8-9.
17 Presubscription revenues refer to the charges that LECs assess when an end user decides to change his or her primary interexchange carrier.
18 Under our rules, an end user has the right to select one interexchange carrier as his or her primary carrier. *See Investigation of Access and Divestiture Related Tariffs*, 101 FCC 2d 911 (1985) (describing the presubscription process LECs must follow).
19 *Attachment A*, at 9-10. Section 32.5081 of our rules, 47 C.F.R. § 32.5081, states that the end user revenue account (Account 5081) shall contain the federally tariffed monthly flat rate charge end users must pay. The independent auditor found that BellSouth improperly included presubscription revenues, from its customers' predesignation of their primary interexchange carriers, in Account 5081.
20 *Id.* at 9.
21 47 C.F.R. §69.605.
22 47 C.F.R. Parts 43, 65.
23 Section 220(d) provides for forfeitures if a carrier fails to keep its accounts, records and memoranda in the manner prescribed by the Commission. 47 U.S.C. §220(d).
24 47 U.S.C. §220(d). Prior to December 19, 1989, the forfeiture amount was fixed at $500 per violation per day.
25 47 C.F.R. §1.80.
26 Although BellSouth's violations began January 1, 1988, we would assess forfeitures only for the period allowed for by limitations period. *See* 47 C.F.R. §1.80(c)(2).
27 *See* 47 U.S.C. §504(b).
28 *See supra* note 9. These findings are discussed in paragraphs 19 through 21 of Attachment A.

revenues for the period January 1, 1988 to the public release date of this Order to Show Cause. We also direct BellSouth to provide estimates of the impact on the operating companies' interstate revenue requirements attributable to all conduct discussed in this order and in Attachment A that continued beyond the period of the audit, and to file these estimates with its response.

15. Since January 1, 1991, the Commission has regulated BellSouth's interstate access charges using the LEC price caprules.[29] Under these rules, BellSouth's initial price cap indexes were established based upon its projected interstate access revenue requirements for the period July 1, 1990 to June 30, 1991. BellSouth's calculation of those revenue requirements may have reflected the practices detailed in Attachment A. Because, under price cap regulation, each succeeding price cap index for a basket of services is a function of an initial price cap index for that basket, BellSouth's price cap indexes for its interstate services (and, by definition, its interstate rates) would have continued to reflect the impact of any improper practices.[30] Absent Commission action, BellSouth's future indexes would reflect any overstatement as well. Therefore, we order BellSouth to show cause why we should not require it to reduce its current price cap indexes to remove any overstatement.[31]

C. Corrective Action

16. Finally, we tentatively conclude that we should direct the BellSouth carriers to improve their internal processes to bring them into compliance with Commission rules and orders, and we order those carriers to show cause why such action should not be required. We will take any additional actions we believe appropriate, including issuing a further Order to Show Cause, based on BellSouth's response.

IV. ORDERING CLAUSES

17. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j), 220(d), and 504(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i), 154(j), 220(d), & 503(b), and Section 1.701 of the Commission's rules, 47 C.F.R. §1.701, that the BellSouth Telephone Operating Companies SHALL SHOW CAUSE within sixty (60) days of the release date of this Order to Show Cause why the Commission should not issue Notices of Apparent Liability for Forfeiture against these companies for failure to keep their accounts, records, and memoranda on the books and in the manner prescribed by the Commission as set out in this Order to Show Cause, including Attachments A and B which are hereby incorporated by reference, and therewith SHALL FILE any and all data and other information required by this Order to Show Cause, including information requested in Attachment A.

18. IT IS FURTHER ORDERED, pursuant to Sections 4(i), 4(j), 201-203, 205, 215, 217-219, and 220 of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i), 154(j), 201-03, 205, 215, 217-19, & 220, and Section 1.701 of the Commission's rules, 47 C.F.R. §1.701, that the BellSouth Telephone Operating Companies SHALL FILE within sixty (60) days of the release date of this Order to Show Cause interstate cost and revenue impact estimates as specified in paragraph 13, *supra*.

19. IT IS FURTHER ORDERED, pursuant to Sections 4(i), 4(j), 201-203, 205, 215, 217-219, and 220 of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i), 154(j), 201-03, 205, 215, 217-19, & 220, and Section 1.701 of the Commission's rules, 47 C.F.R. §1.701, that the BellSouth Telephone Operating Companies SHALL SHOW CAUSE within sixty (60) days of the release date of this Order to Show Cause why they should not be required to adjust their price cap indexes as specified in paragraph 14, *supra*

20. IT IS FURTHER ORDERED, pursuant to Sections 4(i), 4(j), 201-203, 205, 215, 217-219, and 220 of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i), 154(j), 201-03, 205, 215, 217-19, and 220, and Section 1.701 of the Commission's rules, 47 C.F.R. §1.701, that the BellSouth Telephone Operating Companies SHALL SHOW CAUSE within sixty (60) days of the release date of this Order to Show Cause why they should not be required to improve their internal processes to bring them into compliance with Commission rules and orders.

21. IT IS FURTHER ORDERED that the Secretary shall send by certified mail a copy of this Order to Show Cause to BellSouth Telecommunications, Inc., 675 West Peachtree Street, N.E., Atlanta, Georgia 30375.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Attachment A

1. We present below the apparent violations of the BellSouth carriers based on the findings in the Ernst & Young report that prompt us to issue the accompanying *Order to Show Cause*. For each apparent violation, we summarize the independent auditor's finding and any BellSouth reply. We also present our preliminary evaluation of the record. In general, the violations are categorized according to the ratemaking component affected. This attachment separates the apparent violations into the following categories: cash working capital, jurisdictional

[29] *See Policies and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, 5 FCC Rcd 6786 (1990) (*LEC Price Cap Order), Erratum*, 5 FCC Rcd 7664 (Com. Car. Bur.1990), *modified on recon.*, 6 FCC Rcd 2637 (1991) (*LEC Reconsideration Order), aff'd, National Rural Telecom Ass'n v. FCC*, 988 F.2d 174 (D.C. Cir. 1993).

[30] *See* 47 C.F.R. §§61.44(b), 61.45(b)-(c).

[31] To achieve this, BellSouth would need to reduce its price cap indexes by the percentage change in its July 1, 1990 to June 30, 1991 projected interstate access revenue requirement that results from the removal of any overstatement. These reductions to the price cap indexes would need to be apportioned among the baskets based on the relative July 1, 1990 to June 30, 1991 projected interstate access revenue requirements in each basket.

separations, lack of documentation, and other apparent errors. In attachment B, we present the information in the record that describes the impact of these apparent violations on the BellSouth carriers' interstate revenue requirements for the fifteen-month audit period.

A. Cash Working Capital

2. We find that BellSouth's calculation of cash working capital allowances may have violated Commission requirements. Specifically, BellSouth's development of those allowances apparently violated Sections 65.800 and 65.820(d) and (e) of the Commission's rules, which instruct carriers on how to calculate the interstate rate base.[1] As a result of its cash working capital calculations, BellSouth reported incorrect information to NECA in apparent violation of Section 69.605 of the rules[2] and to the Commission in apparent violation of Section 65.600 of the rules.[3] Finally, to the extent this information has been reported in the Commission's automated database, Automated Reporting Management Information System (ARMIS), BellSouth also appears to have violated Section 43.21 of the rules, which requires that data filed in ARMIS be accurate, complete, and responsive, and certified as such by a senior carrier officer.[4]

3. The elements of lead-lag studies to calculate cash working capital were set forth in Docket No. 19129[5] and reaffirmed in Docket No. 86-497.[6] Lead-lag studies measure cash inflows and outflows in relation to the time service is rendered. Revenue and expense items that are received or paid before a service is rendered are considered "lead" items, and revenue and expense items that are received or paid after service is rendered are considered "lag" items.[7] Lead-lag studies determine the number of days between receipt of revenues and payment of expenses. The net number of revenue lag days is then multiplied by the average daily cash expenses to determine cash working capital.[8] A positive net lag results in a positive cash working capital allowance, which increases the rate base; a negative one results in a negative allowance, which reduces the rate base.[9] In previous orders and proceedings, we have set forth the specific criteria for the inclusion and exclusion of various items in cash working capital calculations, but the general rule is that the net lead or lag is applied to the average daily cash expenses. The specifics of BellSouth's apparent violation are discussed below.

4. *Apparent Violation No. 1:* In calculating cash working capital allowances, carriers are allowed to add minimum bank balances to the results obtained from lead-lag studies. The independent auditor found that BellSouth substituted average daily cash balances for minimum bank balances in its cash working capital computations.[10] This practice resulted in a $4,836,000 overstatement of BellSouth's interstate revenue requirements for January 1988 through March 1989, according to the independent auditor.[11]

5. BellSouth argues that its use of average daily cash balances is proper. To support its position, BellSouth cites American Telephone and Telegraph Company (AT&T) and Bell Communication Research, Inc. (Bellcore)[12] company documents that instruct carriers to use average daily bank balances when computing cash working capital. BellSouth contends that these documents make clear that the Commission permits the use of average daily cash balances in computing cash working capital.[13]

6. Although BellSouth admits that the *86-497 Reconsideration Order*[14] stated that the Commission did not intend to depart from the established policy of including minimum bank balances in cash working capital, BellSouth maintains that the Commission had previously permitted more than minimum bank balances to be included in cash working capital. In this regard, BellSouth points out that in Docket No. 19129, the Commission required AT&T to submit a program of cash management to "'minimize cash requirements for the daily operation of the business.'"[15] BellSouth maintains that requirement described a program that was not strictly limited to compensatory or minimum bank balances. BellSouth also contends that it has consistently included average daily cash balances as the minimum cash balance in its cash working capital determination.

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[1] 47 C.F.R. §§65.800, 65.820(d)-(e). These rules require carriers, like the BellSouth carriers, to calculate the cash working capital component of their interstate rate base either by performing a lead-lag study of interstate revenue and expense items or by applying a specified formula. BellSouth elected to perform lead-lag studies.

[2] 47 C.F.R. §69.605.

[3] 47 C.F.R. §65.600. In these rate of return reports to the Commission, BellSouth is required to "provide full and specific answers to all questions propounded and information requested...." 47 C.F.R. §65.600(b), (d)(1).

[4] 47 C.F.R. §43.21(a).

[5] American Telephone & Telegraph Co., Docket No. 19129, *Phase II Final Decision*, 64 FCC 2d 1, 72-73, para. 187 (1977) (*19129 Phase II Final Decision*), *aff'g Phase II Initial Decision*, 64 FCC 2d 131 (1976) (*19129 Phase II Initial Decision*).

[6] Amendment of Part 65 of the Commission's Rules to Prescribe Components of the Rate Base and Net Income of Dominant Carriers, CC Docket No. 86-497, *Report and Order*, 3 FCC Rcd 269 (1987) (*86-497 Order*), *recon.*, 4 FCC Rcd 1697 (1989) (*86-497 Reconsideration Order*), *remanded sub nom.* Illinois Bell Telephone Co. v. FCC, 911 F.2d 776 (D.C. Cir. 1990) (*Illinois Bell I*), *on remand*, 7 FCC Rcd 296 (1991) (*84-497 Decision on Remand*), *affirmed sub nom.* Illinois Bell Telephone Co. v. FCC, 988 F.2d 1254 (D.C. Cir. 1993) (*Illinois Bell II*).

[7] Related terms include "expense lag" (the average net lag of all of a carrier's cash expenses); "revenue lag" (the average net lag of a carrier's revenues); and "net lag" (the net of a carrier's expense lag and revenue lag).

[8] *86-497 Decision on Remand*, 7 FCC Rcd at 297, para. 9.

[9] Annual 1990 Access Tariff Filings, *Memorandum Opinion and Order*, 5 FCC Rcd 4177, 4219 (1990).

[10] *Adjustments Report* at 41.

[11] Letter from Bruce Baldwin, President, National Exchange Carrier Association, Inc., to Mr. Gerald P. Vaughan, Deputy Chief, Operations, Common Carrier Bureau, at BellSouth Attachment (October 12, 1992) (*October 12 Letter*).

[12] Bellcore is a corporation that was created at the 1984 divestiture of AT&T to provide research, engineering, and technical support services to its owners, the Regional Bell Holding Companies, and their affiliates, the Bell Operating Companies.

[13] *Adjustments Report* at 42-43, *citing* Comptrollers Letter M-318, Outline of Procedures for Preparing Cash Working Capital Lag Studies (AT&T Sept. 2, 1977); Section DR90.25 (AT&T Jan.1983); Section SS10.30 (Bellcore June 1984); & Section 550, Issue 2 (Bellcore Sept. 1988).

[14] 4 FCC Rcd at 1699, para. 22.

[15] *Adjustments Report* at 44, *quoting*, *Phase II Final Decision*, 64 FCC 2d at 76, para. 195 & *Phase II Initial Decision*, 64 FCC 2d at 410, para. 908.

BellSouth states that the Commission has approved this practice in every AT&T rate filing since 1978 and every BellSouth rate filing since 1984.[16]

7. We do not find BellSouth's arguments persuasive because the Commission has long held that only minimum bank balances, and not average daily bank balances, should be included in the cash working capital computation. Company documents that interpret Commission policy or rules do not substitute for Commission policy or rules. Additionally, the Commission's request in Docket 19129 for information regarding AT&T's cash management practices cannot reasonably be interpreted to mean that average daily bank balances were to be included in cash working capital. That request was initiated by the Administrative Law Judge (ALJ), who made clear that minimum bank balances, rather than actual cash balances, were to be included in cash working capital.[17] In requiring AT&T to submit a cash management program, the ALJ noted that AT&T had "presented no evidence on the basis of which the Commission can rely to persuade [it] that the cash balances [AT&T] claims in its rate base are required in the rendition of service."[18] Indeed, in affirming the ALJ's requirement, the Commission specifically excluded "General Department demand deposits and petty cash working funds" from cash working capital.[19]

8. Lastly, BellSouth cites no Commission order or other document approving the inclusion of average daily bank balances in cash working capital. If we allowed BellSouth's or AT&T's rates to take effect despite such inclusion, it was only because those carriers' rate filings did not disclose their specific practices. BellSouth's method of calculating its cash working capital allowances apparently violates our requirements.

B. Jurisdictional Separations

9. *Apparent Violation No. 2:* Effective January 1, 1988, the Commission adopted Section 36.142(a) of the rules,[20] which requires certain carriers, including the BellSouth carriers, to apportion all information origination/termination (IOT) equipment costs,[21] other than those for coinless pay telephone equipment and detariffed customer premises equipment, between the federal and state jurisdictions using the transitional subscriber plant factor.[22] Section 69.303(b) of the Commission's rules, in turn, requires LECs to apportion the interstate portion of that investment between the special access and CL elements "on the basis of the relative number of equivalent lines in use."[23]

10. The independent auditor found that BellSouth directly assigned IOT investment to special access in its 1988 annual access tariff filing. BellSouth argues that Western Union challenged this direct assignment in comments on that BellSouth filing, that BellSouth defended the direct assignment in its response to Western Union, and that the Commission allowed BellSouth special access rates to go into effect. The independent auditor then cited the findings in the Commission staff audit of the CL pool that had prompted the Commission to order an independent audit.[24] In its audit report issued in November 1990,[25] the Commission staff concluded that direct assignment of IOT investment is inconsistent with Commission rules.[26] Although the independent auditor indicated that this direct assignment understated BellSouth's CL and total interstate revenue requirements for 1988 by $13.3 million,[27] we believe that it instead shifted IOT costs for 1988 from CL to interstate special access, as shown in Attachment B.

11. BellSouth argues that the independent auditor's statements confirm that its treatment of IOT costs was completely appropriate and the only proper course it could have taken. BellSouth states that its 1988 tariff filing clearly displayed BellSouth's direct assignment of IOT costs to special access, that the Commission was clearly aware of its action, and that the Commission allowed the special access rates as well as NECA's CL rates to become effective with the allocation of IOT costs to special access. BellSouth argues that had it changed its allocation of IOT costs during this period, changes in both CL and special access rates would have been required to avoid a revenue-cost mismatch. BellSouth states further that the Commission staff did not indicate that the direct assignment of IOT costs was incorrect until it issued its audit report of the CL pool in November 1990, some two years after the allocation in question was used to establish rates. BellSouth states that if the Commission believes that this November 1990 interpretation is applicable to BellSouth, then the Commis-

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16 *Adjustments Report* at 44.

17 The ALJ emphasized that:

> working capital is intended to provide only for the current day-to-day needs of the business and not for any of the capital requirement. Second, working capital is the amount of dollars that are necessary to meet current needs, not the amount of dollars that a public utility would like to have on hand or might actually have on hand.

Docket 19129 Phase II Initial Decision, 64 FCC 2d at 403, para. 881.

18 *Id.* at 409, para. 907.

19 *Docket 19129 Phase II Final Decision*, 64 FCC 2d at 76, n.101. The General Department of AT&T provided the BOCs with centralized staff services. *Docket 19129 Phase II Initial Decision*, 64 FCC 2d at 144, para. 30.

20 47 C.F.R. §36.142(a).

21 IOT equipment consists of electronic devices and supporting equipment used to originate and terminate telecommunication messages at the end users' premises. *See* 47 C.F.R. Part 36, Appendix. It includes station apparatus such as telephone and miscellaneous equipment, teletypewriter equipment, small private branch exchanges, and radio equipment (excluding mobile) installed for the end users' use. It also includes embedded customer premise wiring, large private branch exchanges, public telephone terminal equipment, and other terminal equipment. *See* 47 C.F.R. §36.141(a).

22 The subscriber plant factor was formerly used to allocate to interstate operations certain investment in plant; subscriber lines, station equipment, and a portion of central office switching used for message telephone service. Each company's subscriber plant factor was frozen at its 1981 average level and then phased into a nationwide basic allocation factor of 25% over eight years beginning January 1, 1986. Thus, the subscriber plant factor became known as the "transitional subscriber plant factor" during the phase-in period. 47 C.F.R. §36.154(c)-(f).

23 47 C.F.R. §69.303(b).

24 *See Order to Show Cause, supra* at para. 3.

25 Audit Report, Review of Adjustments to the NECA Common Line Pool (Audits Branch Oct. 26, 1990).

26 *Adjustments Report* at 39.

27 *October 12 Letter*, at BellSouth Attachment.

sion must consider reopening the CL pool for 1988 to allow BellSouth to submit additional IOT expenses for recovery.[28]

12. BellSouth, in effect, presents two arguments to justify its direct assignment of IOT costs. First, BellSouth argues that the interpretation of the rules set forth in the Commission staff's November 1990 audit report is incorrect. Second, BellSouth maintains that even if correct, that interpretation should not be applied to BellSouth because the *1988 Access Tariff Order*[29] had allowed BellSouth's 1988 special access rate to go into effect even though it reflected a direct assignment of IOT costs to special access. We address these arguments in turn.

13. BellSouth's argument that the interpretation in the Commission staff's November 1990 audit report is incorrect apparently reflects BellSouth's belief that Part 36, and in particular Section 36.1(c), of our rules permit the direct assignment of IOT costs to special access.[30] Our Part 36 rules, however, prescribe the procedures telecommunications companies must use in apportioning their costs and revenues between the state and interstate jurisdictions. Sections 36.1 and 36.2 outline the separations procedures and the principles that underlie them.[31] These sections state that jurisdictional separations are to be made using either direct assignment or a particular allocator.[32] These general statements do not grant carriers discretion, but only introduce the Part 36 rules that explain when and how direct assignment or an allocator is to be used. If the general introductory statements had been meant as dispositive, there would have been no need for specific language, in the rules that follow, to allow or encourage the use of direct assignment.[33] Sections 36.1(c) and 36.2(a)(1) do not create a general invitation to use direct assignment as the filing carrier chooses.

14. BellSouth also maintains that the Commission implicitly accepted direct assignment of IOT costs to special access in amending Part 69 in 1987 because the Commission intended Part 69 to conform with Part 36.[34] We find no support for this argument in the language of Part 69. On the contrary, Section 69.303(b) of the Commission's rules states unequivocally that LECs are to apportion "all" IOT investment other than that in public telephones and appurtenances between the special access and CL elements "on the basis of the relative number of equivalent lines in use."[35] There is no language in Section 69.303 or in other portions of Part 69 that states or implies that direct assignment is an alternative to this allocation method.

15. As the independent auditor observed, BellSouth and NECA both directly assigned IOT costs to special access in their 1988 access tariff filings, and the Common Carrier Bureau (Bureau) allowed BellSouth's special access and NECA's CL rates to take effectwithout correcting these improper direct assignments.[36] In allowing those rates to take effect, however, the Bureau made no finding as to their underlying lawfulness.[37] In these circumstances, we reject BellSouth's apparent position that this Bureau action absolved BellSouth of its responsibility to report its IOT costs to NECA in accordance with Sections 36.142(a) and 69.303(b). BellSouth should have been aware both from the language of the rule and from communications with NECA[38] that its direct assignment of IOT was inconsistent with the Commission's rules. Nevertheless, BellSouth continued to assign its IOT costs directly to special access during 1988 and attempted no retroactive adjustment to correct that improper direct assignment. Those actions apparently violated Sections 36.142(a) and 69.303(b) of our rules.

16. *Apparent Violation No. 3:* Section 36.153 of the Commission's rules prescribes the methods for assigning cable and wire facilities (C&WF) costs to four specific separations categories.[39] The independent auditor found that in Alabama, Louisiana, and Mississippi, BellSouth used an incorrect basic study factor[40] that decreased the C&WF costs assigned to category 2, Gwideband and exchange trunk C&WF, for private local service. The independent auditor stated that this incorrect factor shifted costs to category 1, exchange line C&WF excluding wideband, for which the costs are directly assigned to the CL rate element.[41] The independent auditor stated further that this

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[28] *Adjustments Report* at 39-40.

[29] Annual 1988 Access Tariff Filings, *Memorandum, Opinion and Order*, 3 FCC Rcd 1281, 1295 (Com. Car. Bur. 1987) (*1988 Access Tariff Order*).

[30] *Id.* at 39, *citing* BellSouth Reply in 1988 Access Tariff Proceeding.

[31] 47 C.F.R. §§36.1, 36.2.

[32] 47 C.F.R. §§36.1(c), 36.2(a)(1).

[33] *Compare* 47 C.F.R. §36.157(a)(1) (certain cable and wire facilities costs to be apportioned) *with* 47 C.F.R. §36.157(a)(2)(other cable and wire facilities costs to be directly assigned).

[34] *Adjustments Report* at 39, *citing* BellSouth Reply in 1988 Access Tariff Proceeding.

[35] 47 C.F.R. §69.303(b).

[36] *See* Annual 1988 Access Tariff Filings, *Memorandum Opinion and Order*, 3 FCC Rcd 1281, 1295, paras. 114 & 116 (Com. Car. Bur. 1987) (allowing BellSouth's 1988 special access tariff to take effect notwithstanding Western Union's argument regarding the over allocation of IOT investment to special access).

[37] *See id.* The Bureau did not explain why it allowed BellSouth's special access tariff to take effect, while suspending the special access tariffs of other carriers.

[38] In June 1988, NECA's Separations Advisory Group informed BellSouth that the Commission staff had concluded that BellSouth's IOT methodology was unacceptable. Response of the NYNEX Telephone Companies, New England Telephone & Telegraph Co. & New York Telephone Co., Apparent Violations of the Commission's Rules, Affidavit of Alfred Boschulte at Attachment A (filed Dec. 10, 1990). While informal advice of Commission staff is not definitive, *Malkan FM Assoc. v. FCC*, 935 F.2d 1313, 1319 (D.C. Cir. 1991), this communication should have alerted BellSouth that the Bureau, by allowing its 1988 special access tariff to take effect, had not intended to approve BellSouth's IOT methodology.

[39] Section 36.152 of the Commission's rules, 47 C.F.R. §36.152, lists these categories.

[40] Basic study factors are ratios such as minute miles per message or book costs per mile of cable that are applied to monthly volume counts, quantity counts, investment, expenses, or other data to assign costs in the separations process. Some basic study factors are used to assign costs to separations categories; other basic study factors are used to apportion plant investment, expenses, and taxes between the state and interstate jurisdictions. To develop basic study factors, the LECs periodically perform studies in which they analyze costs and other data for a specific period of time.

[41] *Adjustments Report* at 46-47.

error overstated BellSouth's interstate revenue requirements for January 1988 through March 1989 by $1,025,000.[42]

17. BellSouth admits that the basic study factor was wrong and explains that a worksheet error produced it.[43] We find that BellSouth's use of this incorrect basic study factor apparently violated Section 36.153.

C. Lack of Documentation and Other Apparent Errors

18. *Apparent Violation No. 4:* One element of a reliable accounting system is maintaining records that support accounting entries. Section 220(c) of the Communications Act recognizes this by authorizing the Commission to have access to and the right of inspection and examination of "all accounts, records, and memoranda, including all documents, papers, and correspondence . . . kept or required to be kept" by the BellSouth carriers.[44] Section 220(c) also places "[t]he burden of proof to justify every accounting entry questioned by the Commission . . . on the person making, authorizing, or requiring such entry . . . ."[45] In addition, Section 32.12(b) of our rules requires the BellSouth carriers to keep their accounting records "with sufficient particularity to show fully the facts pertaining to all accounting entries" and to file "[t]he detail records in such manner as to be readily accessible for examination" by Commission representatives.[46]

19. The independent auditor found twenty-two instances where revenue, cost, basic study or tax adjustments, each involving in excess of $100,000 in costs or revenues, were unsupported by adequate documentation: South Central Bell in Alabama could not provide adequate documentation to support three adjustments.

> South Central Bell in Kentucky could not provide support documentation for one adjustment.
>
> South Central Bell in Louisiana could not provide support documentation for two adjustments.
>
> South Central Bell in Mississippi could not provide support documentation for two adjustments.
>
> South Central Bell in Tennessee was unable to provide support documentation for two adjustments.
>
> Southern Bell in Florida could not provide support documentation for two adjustments.
>
> Southern Bell in Georgia could not provide support documentation for four adjustments.
>
> Southern Bell in North Carolina could not provide support documentation for two adjustments.
>
> Southern Bell in South Carolina could not provide support documentation for four adjustments.[47]

20. In all twenty-two cases, BellSouth admits that it could not locate the supporting documentation.[48] We tentatively find that BellSouth's admitted documentation failures would support a conclusion that BellSouth fails to keep its accounts, records, and memoranda as prescribed by the Commission.

21. *Apparent Violation No. 5:* The 800 Readyline service was an AT&T 800 service that terminated over the customer's local exchange service line rather than over a dedicated WATS-type line. The independent auditor found that in Alabama, when reporting an 800 Readyline accrual adjustment to NECA, BellSouth reported an increase in revenues instead of the decrease which actually occurred. The error resulted in BellSouth's overstating its CL revenues for September 1988 by $338,000.[49] BellSouth admits this error and explains that an input of $169,000 was inadvertently made with the wrong sign resulting in the $338,000 overstatement of revenue.[50] We find that in this instance, BellSouth's internal accounting controls were apparently deficient.

22. *Apparent Violation No. 6:* The independent auditor found that South Central Bell included presubscription revenues for the predesignation of interexchange carriers (IXCs) by end users in Account 5081, End user revenue, in apparent violation of Section 32.5081 of the Commission's rules.[51] This overstated BellSouth's CL revenues and understated its traffic sensitive revenues for January 1988 through March 1989 by $999,000.[52]

23. We quote Section 32.5081 in its entirety:

> §32.5081 End user revenue. This account shall contain the federally tariffed monthly flat rate charge assessed upon end users.[53]

We find no support here for BellSouth's inclusion of these revenues in Account 5081, and its eventual assignment of these revenues to the CL pool. Under the Commission's rules, Account 5081 contains revenue generated by the federally tariffed flat monthly rate charge assessed upon end users. Account 5081 does not include additional amounts, like presubscription revenues, even though they are tariffed amounts charged to end users. Presubscription revenues pertain to the switched message toll service, and carriers must include them in Account 5082, Switched access revenue,[54] which is assigned to the traffic sensitive element as miscellaneous service revenues. Thus, apparently, BellSouth not only reported these revenues to the wrong NECA pool, but also recorded them in the wrong account.

24. The above errors suggest that BellSouth's internal controls apparently failed to function properly in multiple instances. As a result of such errors, it may be necessary to require adjustments to BellSouth's price cap indexes and

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42 *October 12 Letter*, at BellSouth Attachment.
43 *Adjustments Report* at 47.
44 47 U.S.C. §220(c).
45 *Id.*
46 47 C.F.R. §32.12(b).
47 *Adjustment Report* at 45-46.
48 *Id.* at 46.
49 *Adjustments Report* at 47.
50 *Id.*
51 *Id.*
52 *October 12 Letter*, at BellSouth Attachment.
53 47 C.F.R. §32.5081.
54 47 C.F.R. §32.5082.

take other remedial action depending upon our review of the additional information we have directed BellSouth to submit.

Attachment B

BELLSOUTH - Summary of Apparent Violations

INTERSTATE REVENUE REQUIREMENT OVERSTATEMENT FOR THE AUDIT PERIOD (See Note) ($000)

COMMISSION FINDING	CARRIER	TOTAL	COMMON LINE	OTEHR INTERSTATE ACCESS ELEMENTS
1. Included amounts in excess of minimum bank balances in computing CWC.	BellSouth	4,836	2,661	2,175
2. Used direct assignment of IO/T where not allowed.	BellSouth	0	(13,300)	13,300
3. Used incorrect basic study for C&WF Category 2.	BellSouth	1,025	854	171
4. Numerous unsupported retroactive adjustments.	BellSouth		Unknown	
5. Errors in reporting 800 readyline service revenues.	BellSouth	(338)	(338)	0
6. Erroneously reported PICC revenues to common line.	BellSouth	0	(999)	999

Note: Overstated expenses are indicated by positive amounts.
Understated expenses are indicated by negative (parentheses) amounts.
Overstated revenues are indicated by negative (parentheses) amounts.
Understated revenues are indicated by positive amounts.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

OPERATOR COMMUNICATIONS, INC.
d/b/a ONCOR COMMUNICATIONS, INC.

File No. ENF-95-04

Apparent Liability for Forfeiture

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 29, 1995; Released: March 31, 1995

By the Commission:

I. INTRODUCTION

1. By this Notice of Apparent Liability for Forfeiture ("NAL"), we initiate enforcement action against Operator Communications, Inc., d/b/a Oncor Communications, Inc. (hereinafter collectively, "Oncor").[1] For the reasons discussed below, we find that Oncor has willfully and repeatedly violated Commission rules and orders.[2] by changing the primary interexchange carrier ("PIC") designated by the Metropolitan Transportation Authority of the State of New York ("MTA") for ninety-four (94) of its pay telephone lines without MTA's authorization.[3] Based on our review of the facts and circumstances surrounding the violations, we find that Oncor is apparently liable for forfeiture in the amount of one million four hundred ten thousand dollars ($1,410,000).

II. BACKGROUND

2. In its *Allocation Order* and subsequent *Reconsideration Order* and *Waiver Order*,[4] the Commission set forth rules and procedures for implementing equal access[5] and customer presubscription.[6] to an interexchange carrier ("IXC").[7] The Commission's original allocation plan required IXCs to have on file a letter of agency ("LOA") signed by the customer before submitting PIC change orders to the local exchange carrier ("LEC") on behalf of the customer.[8] After considering claims by certain IXCs that this requirement would stifle competition because consumers would not be inclined to execute the LOAs even though they agreed to change their PIC, the Commission later modified the requirement to allow IXCs to initiate PIC changes if they had "instituted steps to obtain signed LOAs."[9] In 1992, we again revised our rules because the Commission continued to receive complaints about unauthorized PIC changes.[10] Specifically, while we recognized the benefits of permitting a telephone-based industry to rely on telemarketing to solicit new business, we required IXCs to institute one of the following four confirmation procedures before submitting PIC change orders generated by telemarketing: (1) obtain the consumer's written authorization; (2) obtain the consumer's electronic authorization by use of an 800 number; (3) have the consumer's oral authorization verified by an independent third party; or (4) send an information package, including a prepaid, returnable postcard, within three days of the consumer's request for a PIC change, and wait 14 days before submitting the consumer's order to the LEC, so that the consumer has sufficient time to return the postcard denying, cancelling or confirming the change order.[11] Hence, our rules and orders require that IXCs either obtain a signed LOA or complete one of the four above-listed telemarketing verification procedures before submitting PIC change requests to LECs on behalf of consumers.

3. In April 1994, the New York Attorney General's office wrote to Oncor complaining that Oncor had "slammed" numerous pay telephones leased by MTA from New York Telephone Company ("NYT"). The letter alleged that Oncor had submitted to NYT unauthorized PIC change requests substituting Oncor as the operator service provider and PIC for hundreds of MTA's pay telephones.[12]

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[1] Oncor maintains corporate offices at 6707 Democracy Boulevard, Bethesda, Maryland 20817. Ronald J. Haan is the owner, Chairman and Chief Executive Officer of Oncor.

[2] *See* 47 C.F.R. § 64.1100; Policies and Rules Concerning Long Distance Carriers, 7 FCC Rcd 1038 (1992), *recon. denied*, 8 FCC Rcd 3215 (1993) (*PIC Change Order);* Investigation of Access and Divestiture Related Tariffs, 101 FCC 2d 911 (1985) (*Allocation Order), recon. denied,* 102 FCC 2d 503 (1985) (*Reconsideration Order);* Investigation of Access and Divestiture Related Tariffs, Phase I, 101 FCC 2d 935 (1985) (*Waiver Order).*

[3] The practice of changing a customer's PIC without the customer's authorization is commonly referred to as "slamming."

[4] *See supra,* note 2.

[5] Equal access for interexchange carriers ("IXCs") is that which is equal in type, quality and price to the access to local exchange facilities provided to AT&T and its affiliates. *United States v. American Tel. & Tel.,* 552 F. Supp. 131, 227 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States,* 460 U.S. 1001 (1983) (*Modification of Final Judgment* or "*MFJ*"). "Equal access allows end users to access facilities of a designated [IXC] by dialing '1' only." *Allocation Order,* 101 FCC 2d at 911.

[6] Presubscription is the process by which each customer selects one primary interexchange carrier ("PIC"), from among several available carriers, for the customer's phone line(s). *Allocation Order,* 101 FCC 2d at 911, 928. Thus, when a customer dials "1" only the customer accesses the primary IXC's services. An end user can also use other IXCs by dialing a five-digit access codes. *Id.* at 911.

[7] Pursuant to the *MFJ,* the Bell Operating Companies (BOCs) were ordered to provide equal access to their customers by September 1986, where technically feasible. *Id.*

[8] An LOA is a document, signed by the customer, which states that the customer has selected a particular carrier as that customer's primary long distance carrier. *Allocation Order,* 101 FCC 2d at 929.

[9] *Waiver Order,* 101 FCC 2d at 942.

[10] *PIC Change Order* 7 FCC Rcd at 1038-39 .

[11] *See* 47 C.F.R. § 64.1100; *PIC Change Order,* 7 FCC Rcd at 1045.

[12] The copy of the letter, which staff deemed as an informal complaint (IC# 94-07922), also alleged that Oncor slammed the phones of Commack Union Free School District. For reasons discussed below, this forfeiture action is not based upon these alleged incidents.

4. The Attorney General's office forwarded to the Commission a copy of its letter to Oncor. Thereafter, the Common Carrier Bureau's Enforcement Division directed Oncor to investigate the alleged unauthorized PIC changes and submit its findings to the Commission.[13] Oncor's initial response to the staff's request provided little indication that Oncor had investigated fully the MTA's allegations. Oncor provided only a cursory, general description of its agents' marketing practices, and stated that the agent could not provide documentation that MTA authorized the PIC changes.[14] Accordingly, the staff sent a second letter to Oncor, directing the company to provide specific information regarding each MTA pay telephone line allegedly switched to Oncor.[15]

5. In response to the staff's second request, Oncor reported that two independent Oncor distributors had electronically submitted to Oncor the MTA PIC change requests as part of Oncor's contractual agreement with the distributors to market Oncor's services to public pay-telephone site owners.[16] According to Oncor, the distributors had obtained the PIC change requests from agents responsible for soliciting customers for Oncor.[17] Although Oncor described several procedures it typically employs to solicit customers, it has not identified the specific procedures that Oncor or its agents used that led to MTA's PIC changes. For instance, in its response to the staff's first information request, Oncor stated that it utilizes "incentive based commission checks" that serve as an LOA.[18] While MTA acknowledged receiving such checks from Oncor, an MTA official has reported that it did not endorse or deposit the checks. Rather, MTA has reported that it returned them to Oncor with a clear statement that it would not accept checks as a method of converting the PIC for its pay telephone lines.[19] Moreover, in its response to the staff's second information request, Oncor made no mention of the "commission checks" and instead described its customary telemarketing and on-site sales techniques. Thus, while Oncor described its typical sales and verification procedures, it has produced no evidence that it obtained any form of LOA from MTA or specified what, if any, steps it followed to verify telemarketing sales that resulted in the MTA PIC conversions.

III. DISCUSSION

6. We have carefully evaluated the information obtained as a result of our investigation, and, based on the foregoing, we conclude that Oncor is apparently liable for forfeiture for willful and repeated violations of the Commission's rules and PIC change requirements.

7. Our review of the MTA allegations as well as Oncor's response and supporting materials has uncovered that between at least November 1993 and at least April 1994, Oncor submitted PIC change requests to NYT that resulted in the conversion of over one hundred pay telephone lines from AT&T, MTA's presubscribed IXC, to Oncor.[20] Our investigation has revealed that Oncor converted, or caused the conversion of, at least ninety-four (94) different MTA telephone lines on or about April 2, 1994.[21] Thus, our action here is within the one year limitations period for forfeiture actions.[22]

8. We find the violations particularly egregious in this case. Oncor has produced no arguments or evidence that counter MTA's claim that it did not authorize or approve any of the PIC changes. Oncor has not submitted evidence of an LOA or other written authorization, electronic authorization through use of an 800 number, verification of oral authorization, or use of an acceptable information package including a cancellation option. Thus, it appears that Oncor failed to secure an LOA or utilize any of the four permissible telemarketing methods for converting a customer's PIC established by the Commission.[23]

9. In an apparent attempt to explain the unauthorized conversions, Oncor has made the general claim that, through its agents, it sent "commission checks" that were designed to function as an LOA once cashed or deposited by MTA. Even if we condoned Oncor's practice of using commission checks as LOAs,[24] Oncor has presented no evidence that MTA ever endorsed such checks in connection with the telephone lines at issue here, nor has it provided evidence that the commission checks were otherwise accepted or approved by the MTA. On the contrary, information obtained during the investigation indicates that MTA routinely returned the checks to Oncor with a letter explaining that MTA relies solely on a competitive bidding

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[13] Letter from Kathie A. Kneff to ITI/Oncor and Bell Communications Research, Inc., dated July 28, 1994.

[14] Letter from Judith M. deGrandpre to Kathie Kneff, dated August 25, 1994.

[15] Letter from Kathie A. Kneff to ITI/Oncor and NYNEX-New York, dated December 6, 1994.

[16] Letter from Elisa Zafrani to Kathie Kneff, dated January 12, 1995.

[17] Oncor also stated that both "subagents" are companies operated by the same individual. The staff's investigation to date has not revealed whether the subagents have also solicited customers for carriers other than Oncor.

[18] Letter from Judith M. deGrandpre to Kathie Kneff, dated August 25, 1994.

[19] Letter from David J. Florio to Heather McDowell, dated February 27, 1995.

[20] Our authority to assess forfeitures for many of the unauthorized conversions is governed by the one year limitations period in Section 503(b) of the Communications Act. 47 U.S.C. § 503(b)(6)(B). This provision states in relevant part that, "No forfeiture penalty shall be determined or imposed against any person under this subsection if . . . the violation charged occurred more than 1 year prior to the date of issuance of the required notice or notice of apparent liability."

[21] Oncor identified the telephone lines converted, as well as the dates on which Oncor service began and ended, in its response to the staff's second information request. Letter from Elisa Zafrani to Kathie Kneff, dated January 12, 1995.

[22] 47 U.S.C. § 503(b)(6)(B). We stress, however, that it appears that Oncor did not comply with the Commission's rules or orders in ordering PIC changes to any of the MTA telephones or a Commack Union Free School District telephone. Indeed, some of the earlier unauthorized changes to MTA telephones, albeit no longer actionable, are an added factor demonstrating that Oncor's violations were willful and repeated. Therefore, while forfeiture penalties based upon conversions that were corrected prior to April 1994 are time barred, we strongly admonish Oncor for its apparently unauthorized conversion of these telephone lines.

[23] 47 C.F.R. § 64.1100; *PIC Change Order*, 7 FCC Rcd at 1045.

[24] This practice, as well as several other issues relating to unauthorized PIC changes, is under review in a pending rulemaking proceeding. *Policies and Rules Concening Unauthorized Changes of Consumers' Long Distance Carriers*, Notice of Proposed Rulemaking, 9 FCC Rcd. 6887 (1994), 59 Fed. R. 63750 (December 9, 1994).

process to select a PIC for its pay telephones and did not recognize any relationship with Oncor.[25] Oncor, however, continued to make unauthorized PIC changes to MTA's pay telephones.

10. Oncor's attempt to distance itself from the unlawful PIC changes by pointing to the culpability of its distributors, independent telemarketing agents, or "subagents" is unavailing.[26] In this instance, the distributors' or agents' actions do not relieve Oncor of its independent obligation to ensure compliance with our rules, nor do they otherwise mitigate Oncor's role in the apparent violations. The Communications Act deems the acts or omissions of an agent or other person acting for a common carrier to be the acts or omissions of the carrier itself.[27] Hence, the Act expressly prohibits a carrier from evading the requirements of the Act or the Commission's rules or orders by hiring someone else to engage in conduct that contravenes these requirements.

11. Furthermore, the facts before us reveal that the unauthorized MTA PIC changes followed a consistent pattern (*e.g.*, periodic conversion of large batches of telephone numbers on the same date), and were repeated in the face of prior cancellations by the MTA. For example, of the ninety-four (94) MTA telephone lines that are the subject of this action, sixty-four (64) had been previously switched to Oncor and MTA had quickly thereafter cancelled Oncor's service. Moreover, MTA had also previously notified Oncor that it did not want Oncor service when it returned Oncor's so-called "commission checks." We therefore find no support for a determination that the unauthorized PIC changes were isolated incidents or the result of a "rogue" marketing agent. Based on the number and frequency of the unauthorized conversions and the circumstances surrounding them, we can reasonably conclude that Oncor apparently knew or should have known that MTA had not authorized Oncor to provide service for its pay telephones. Thus, it appears that the unauthorized PIC changes were the result of either deliberate misconduct by Oncor or its reckless disregard for the Commission's rules and orders. For these reasons we find that the facts support a determination that Oncor's apparent violations were willful and repeated.[28]

12. Section 503(b)(2)(B) of the Communications Act authorizes the Commission to assess a forfeiture of up to one hundred thousand dollars ($100,000) for each violation or each day of a continuing violation up to a statutory maximum of one million dollars ($1,000,000) for a single act or failure to act.[29] In exercising such authority, the Commission is required to take into account "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."[30] For purposes of assessing an appropriate forfeiture penalty in this case, we regard the conversion of each of the ninety-four (94) MTA telephone lines.[31] as a separate violation. After weighing the circumstances surrounding the violations, we find Oncor to be apparently liable for a forfeiture of fifteen thousand dollars ($15,000) for each of the unauthorized conversions, resulting in a total forfeiture of one million four hundred ten thousand dollars ($1,410,000) (94 x $15,000). Based on the information obtained during the investigation of this matter, we believe this amount is reasonable relative to Oncor's assets and revenues. Oncor, however, will have the opportunity to submit evidence and arguments in response to this NAL to show that no forfeiture should be imposed or that some lesser amount should be assessed.[32] In this regard, we note that we have previously held that a licensee's gross revenues are the best indicator of its ability to pay a forfeiture and that use of gross revenues to determine a party's ability to pay is reasonable, appropriate, and a useful yardstick in helping to analyze a company's financial condition for forfeiture purposes.[33] In *PJB Communications*, we found that forfeitures of $5,000 and $3,000 assessed against two jointly owned and operated paging companies were not excessive because the total forfeiture amount ($8,000) represented approximately 2.02 percent of the companies' combined gross revenues of $395,469.[34] We will give full consideration to any financial information provided by Oncor before assessing a final forfeiture amount.

IV. CONCLUSIONS AND ORDERING CLAUSES

13. We have carefully reviewed the information obtained through our investigation and conclude that on or about April 2, 1994, Oncor apparently converted or caused a local exchange carrier to convert ninety-four (94) MTA telephone lines without MTA's authorization. We further conclude that Oncor thereby willfully and repeatedly violated Commission rules governing changes in long distance carriers, and that its conduct warrants a forfeiture in the amount of one million four hundred ten thousand dollars ($1,410,000).

14. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and Section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, Oncor Communications, Inc. IS HEREBY NOTIFIED of an Apparent Liability for Forfeiture in the amount of one million four hundred ten thousand dollars ($1,410,000) for its willful and repeated violation of the Commission's PIC change rules and orders.

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[25] *See supra*, note 19.

[26] Oncor also seems to suggest that it should not be held liable for the unauthorized PIC changes because its distributor contract provisions and sales manuals require compliance with Commission statutes, rules, and policies. We find this argument similarly unpersuasive.

[27] 47 U.S.C. § 217.

[28] *See id.* § 503(b)(1)(B).

[29] *Id.* § 503(b)(2)(B).

[30] *Id.* at § 503(b)(2)(D).

[31] *See supra* note 21.

[32] *See* 47 U.S.C. § 503(b)(4)(C); 47 C.F.R. § 1.80(f)(3).

[33] *PJB Communications of Virginia*, 7 FCC Rcd 2088-89 (1992) (*PJB Communications*).

[34] *Id.* at 2089; *see also*, David L. Hollingsworth d/b/a Worland Services, 7 FCC Rcd 6640 (Com. Car. Bur. 1992) ($6,000 forfeiture representing approximately 1.21 percent of licensee's 1991 gross revenues and approximately 1.34 percent of projected 1992 grossh)revenues not found to be excessive); *Afton Communications Corp.*, 7 FCC Rcd 6741 (Com. Car. Bur. 1992) ($6,000 forfeiture representing approximately 3.91 percent of 1990 gross revenues and 2.75 percent of projected 1992 gross revenues not found to be excessive).

47 C.F.R. § 64.1100; *PIC Change Order*, 7 FCC Rcd 1038 (1992); *Allocation Order*, 101 FCC 2d 911 (1985); *Waiver Order*, 101 FCC 2d 935 (1985).

15. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that within thirty days of the release of this Notice, Oncor Communications, Inc. SHALL PAY the full amount of the proposed forfeiture[35] OR SHALL FILE a response showing why the proposed forfeiture should not be imposed or should be reduced.

16. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability for Forfeiture SHALL BE SENT by certified mail to Counsel for Oncor Communications, Inc., Mitchell F. Brecher, Esq., Donelan, Cleary, Wood & Maser, P.C. Suite 750, 1100 New York Avenue, N.W., Washington, D.C. 20005-3934.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

[35] The forfeiture amount should be paid by check or money order drawn to the order of the Federal Communications Commission, and should be mailed to Federal Communications Commission, P.O. Box. 73482, Chicago, Illinois 60673-7482.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: April 14, 1995

FCC WILL NOT MAIL OUT COMMON CARRIER FORM 395s THIS YEAR

Due to a malfunction in the computer software of its mailing list database, the FCC will be unable to timely mail out courtesy copies of its Common Carrier Form 395, Annual Employment Report, to all licensees and permittees who had previously filed the report. Copies of this form may be obtained from the FCC Form Distribution Center by calling (202) 418-FORM. The filing date for the Form 395 is still May 31. If the licensee or permittee is unable to meet the deadline because of a delay in obtaining the form, the Commission will entertain requests for a reasonable extention of the filing deadline. For further information, please contact Jeff Hertz at (202) 418-0984.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

David Bailey, d/b/a Port Gibson Cable TV

v. PA83-0026

Mississippi Power & Light Company

LETTER

Released: January 10, 1995

Sim C. Dulaney. Esq.
O' Hara Cottage
902 Farmer Street
Post Office Box 176
Port Gibson, Mississippi 39150

Dear Mr. Dulaney:

In a December 16, 1994 letter, you advised the Commission that your client, David Bailey, no longer wishes to pursue his complaint in *David Bailey, d/b/a Port Gibson Cable TV v. Mississippi Power & Light Company*, File No. PA-83-0026. In accordance with your letter, that complaint is hereby dismissed.

Truly yours,

Kenneth P. Moran
Chief, Accounting and Audits Division

cc: Mississippi Power & Light

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

MLGAL PARTNERS, L.P.
(Transferor)

and

EVERGREEN MEDIA CORPORATION
(Transferee)

For Transfer of Control of

BPI CHICAGO LICENSE SUBSIDIARY, INC.
Licensee of

WVAZ(FM), Oak Park, IL	File No. BTCH-950201GH
WEJM(AM), Chicago, IL	BTC-950201GI
WJPC-FM, Lansing, IL	BTCH-950201GJ

BPI CHARLOTTE LICENSE SUBSIDIARY, INC.
Licensee of

WBAV(AM), Charlotte, NC	File No. BTC-950201GK
WBAV-FM, Gastonia, NC	BTCH-950201GL
WPEG(FM), Concord, NC	BTCH-950201GM

BPI DALLAS LICENSE SUBSIDIARY, INC.
Licensee of

KSKY(AM), Balch Springs, TX	File No. BTC-950201GN

BPI NEW YORK LICENSE SUBSIDIARY, INC.
Licensee of

WYNY-FM, Lake Success, NY	File No. BTC-950201GO

BPI DETROIT LICENSE SUBSIDIARY, INC.
Licensee of

WDOZ(AM), Dearborn, MI	File No. BTC-950201GP
WNIC(FM), Dearborn, MI	BTCH-950201GQ
WKQI(FM), Detroit, MI	BTCH-950201GR

MEMORANDUM OPINION AND ORDER

Adopted: March 30, 1995; Released: April 7, 1995

By the Commission:

1. The Commission has before it the above-captioned applications for a transfer of control affecting eleven radio licenses. The eleven licenses are held by separate subsidiaries of Broadcasting Partners, Inc., ("BPI"), which in turn is a subsidiary of MLGAL, L.P. ("MLGAL").[1] Evergreen Media Corporation ("Evergreen") and BPI have entered into a Plan of Reorganization and Merger whereby Evergreen will create a wholly-owned subsidiary, Evergreen Media Partners Corporation ("Evergreen Partners"), for the purpose of merging Evergreen Partners and BPI. A pleading styled a petition to deny the transfer of control was filed by David Naylor on March 2, 1995. Mr. Naylor has not submitted an affidavit in which he attests to his personal knowledge of the facts alleged in the pleading as required pursuant to Section 309(d)(1) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(d)(1). Accordingly, we find that Mr. Naylor lacks standing to petition to deny the application for transfer of control and we will treat his pleading as an informal objection in accordance with 47 C.F.R. § 73.3587. An opposition to Mr. Naylor's pleading was filed by MLGAL and BPI on March 16, 1995.

MULTIPLE OWNERSHIP MATTERS

2. Among other stations, Evergreen proposes through this merger to acquire WEJM(AM), Chicago, Illinois, WJPC-FM, Lansing, Illinois and WVAZ(FM), Oak Park, Illinois. Because Evergreen currently owns WMVP(AM), WLUP-FM and WRCX(FM), all licensed to Chicago, Illinois, a question of compliance with the local radio ownership rules is presented by the proposed acquisition of BPI's Chicago-area stations.[2] Therefore, Evergreen has submitted a showing required by 47 C.F.R. § 73.3555(a), the radio local ownership rules.[3] That showing demonstrates that all of the principal community contours of the two AM and four FM stations named here are mutually overlapping. Thus, the six stations' principal community contours constitute one radio market for purposes of the radio local ownership rules. Additionally, Evergreen demonstrates that more than fifteen commercial radio stations have principal community contours which overlap the principal community contours of the stations it proposes to co-own and thus has submitted the required audience share data for the two AM and four FM stations. The data submitted demonstrate that the stations have a combined audience share of 15.2 percent, which complies with the 25

[1] The BPI subsidiaries, and the licenses affected by this merger are as follows: BPI Chicago License Subsidiary, Inc., licensee of WVAZ(FM), Oak Park, Illinois, WEJM(AM), Chicago, Illinois, and WJPC-FM, Lansing, Illinois; BPI Charlotte License Subsidiary, Inc., licensee of WBAV(AM), Charlotte, North Carolina, WBAV-FM, Gastonia, North Carolina, and WPEG(FM), Concord, North Carolina; BPI Dallas License Subsidiary, Inc., the licensee of KSKY(AM), Balch Springs, Texas; BPI New York License Subsidiary, licensee of WYNY-FM, Lake Success, New York; BPI Detroit License Subsidiary, Inc., licensee of WDOZ(AM) and WNIC(FM), Dearborn, Michigan and WKQI(FM), Detroit, Michigan.

[2] Evergreen also states that it owns or has attributable interests in: KKBT(AM), Los Angeles, California; KMEL(FM) and KIOI(FM), San Francisco, California; WTOP(AM) and WASH(FM), Washington, DC; KTRH(AM) and KLOL(FM), Houston, Texas; and WVCG(AM), Coral Gables, Florida.

[3] For radio markets of fifteen or more commercial radio stations, the local ownership rules impose both numerical ownership limits of two AM and two FM stations and a combined audience share cap for all co-owned market stations of 25 percent. *See* 47 C.F.R. § 73.3555(a)(1)(ii).

percent audience share cap imposed by the rules. Nevertheless, if this transaction is approved, Evergreen's ownership of the Chicago stations would violate the two AM/ two FM numerical ownership limitations set forth in 47 C.F.R. § 73.3555(a)(1)(ii).

3. Under these circumstances, Evergreen requests a twelve month waiver of the radio local ownership rules in order to permit the post-merger divestiture of two of the subject FM stations. In support of a twelve month rule waiver, Evergreen asserts that such a waiver is consistent with Commission precedent and will allow it to integrate the operations of the stations it seeks to acquire here with stations it presently operates in Los Angeles, San Francisco, Chicago, Washington, Houston and Coral Gables. Evergreen therefore argues that the proposed merger will lead to economic efficiencies and cost savings that will ultimately benefit the public interest. Additionally, Evergreen argues that its ownership of the subject stations during the period of the temporary waiver will not have an adverse impact on diversity and competition in the Chicago market, which is served by an abundance of other media sources. Evergreen further pledges to use the twelve month waiver period to seek a qualified minority buyer for at least one of the two FM stations that will be divested.

4. We are persuaded that a temporary waiver of the local ownership rules for a one year period is justified. As Evergreen points out, the requested waiver affects only one radio market relevant to this multi-station transaction. The Commission has in the past waived provisions of the broadcast multiple ownership rules on a temporary basis in order to accommodate multi-station transactions. Our approval of a temporary waiver here is consistent with similar waivers we have granted that have allowed applicants to come into compliance with the rules in an orderly manner. *See Viacom, Inc.*, 9 FCC Rcd 1577 (1994); *Midwest Communications, Inc.*, 7 FCC Rcd 159 (1991); *RKO General, Inc. (KRTH)*, 4 FCC Rcd 4089 (1989); *TVX Broadcast Group, Inc.*, 2 FCC Rcd 1534 (1987).

5. As in the cited cases, we are convinced in the circumstances here a temporary twelve month waiver will not compromise the fundamental policies served by the radio local ownership rules. Evergreen's showing demonstrates that the area of mutual overlap among the stations it presently owns and the stations that it seeks to acquire in Chicago occurs within the Chicago radio metro market, as defined by Arbitron, Inc. Evergreen's showing also demonstrates that Chicago is the third largest radio metro market in the country, and is now served by 39 FM radio stations and 34 AM radio stations. Furthermore, 15 television stations are licensed to counties in the Chicago radio metro market. Evergreen also points out that Chicago is served by two major daily newspapers and operating cable systems. Additionally, the eighty-eight broadcast outlets licensed to the Chicago radio metro market will be owned and operated by 62 separate broadcast "voices" during the temporary waiver period. In the past, we have acknowledged that a temporary waiver of the local ownership rules may be supported by demonstrating that the relevant market is well served by other media outlets. *See, e.g., Forward of Kansas (KVGB(AM)/KVGB-FM Great Bend, KS)*, FCC 95-99 (Mar. 9, 1995); *Patteson Brothers, Inc.*, 8 FCC Rcd 7595 (1993). Given the abundance of other sources of mass media available in the relevant market, we find that allowing Evergreen to exceed the local ownership rule's numerical limits by owning two additional FM stations during the period of the temporary waiver will not adversely effect diversity and competition. We note moreover, that the subject stations' combined audience share is 15.2 percent, well below the 25 percent threshhold above which excessive concentration is presumed.

6. We also find that grant of the requested temporary waiver would be consistent with the Commission's interest in promoting minority ownership in broadcasting. Evergreen has pledged to take affirmative steps during the period of the temporary waiver to seek out a qualified minority buyer for at least one of the two stations to be divested. Thus, grant of the temporary waiver may advance diversity via increased minority ownership. *See, e.g., Notice of Proposed Rulemaking* in MM Docket No. 94-149 and 91-140, FCC 94-323 (Dec. 15, 1994). Evergreen would not be in a position to seek out minority buyers for the two radio stations if immediate divestiture were required, and we therefore find that the temporary waiver period will advance important public interest goals. Furthermore, the merger proposed will permit the parties involved to take advantage of cost savings and economies of scale that may ultimately lead to public interest benefits in the form of additional and improved programming on the stations. Given the demonstrated level of competition and diversity in the relevant market and Evergreen's pledge to seek a qualified minority buyer for at least one of the stations to be divested, we find that a temporary waiver is justified.

7. We further note that the Commission has delegated to the Chief, Mass Media Bureau the authority to act on petitions or requests for waiver of the Commission's rules, whether or not accompanied by an application, when such petitions or requests do not contain new or novel arguments not previously considered by the Commission, and do not present facts or arguments which appear to justify a change in Commission policy. *See* 47 C.F.R. § 0.283(b)(4). Pursuant to this authority, the Commission hereby authorizes the staff to grant requests for temporary waivers of 47 C.F.R. § 73.3555(a)(1) for periods not to exceed 12 months that do not present any new or novel issues. This interpretation we adopt today does not extend to requests for temporary waivers in excess of 12 months or requests for extensions of previously granted temporary waivers.

EEO MATTERS

8. Mr. Naylor alleges that WYNY-FM has failed to meet "its numerical goals" with respect to hiring minorities. Further, Mr. Naylor accuses the station of hiring discrimination. In support thereof, Mr. Naylor attaches a copy of WYNY-FM's Annual Employment Report for 1993. He requests that we investigate the station's recruitment efforts, interview data and hiring practices during the current license term, and thereafter, deny the application for transfer of control.

9. Based on our review of the informal objection, we conclude that Mr. Naylor has not raised specific allegations of discrimination or a violation of our EEO Rule sufficient to show that a grant of the application for transfer of control would be *prima facie* inconsistent with the public interest, as required by 47 U.S.C. § 309(d)(1). *See Astroline Communications Co. v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988); *Dubuque TV Limited Partnership*, 4 FCC Rcd 1999 (1989). *See also Heritage-Wisconsin Broadcasting*, 8 FCC Rcd 5607 (1993). With respect to Mr. Naylor's allegations regarding WYNY-FM's EEO program, we find his arguments to be without merit. Mr. Naylor's allegations are

entirely based on an employment report which predates the licensee's acquisition of the station on June 25, 1993. Thus, none of the allegations made by Mr. Naylor justify departure from our usual process of reviewing EEO complaints in the context of renewal. *Metromedia, Inc.*, 98 FCC 2d 300, 302 n.2 (1984). WYNY-FM's license will expire on June 1, 1998. At that time, the renewal process will include an analysis of the station's employment profiles as reflected in its Annual Employment Reports for the years 1994 through 1998. The station recently moved its main studio from Queens, New York to Jersey City, New Jersey. We note that the labor forces of both Queens, New York and Jersey City, New Jersey contain significantly larger minority components than the labor force of Lake Success, New York, the station's community of license. Thus, at renewal time, the station's employment profiles will be compared to available labor force statistics for the New York, New York Metropolitan Statistical Area (MSA) for those years in which the studio was in Queens, and to labor force data for the Jersey City, New Jersey MSA beginning with the licensee's 1995 Annual Employment Report. *See Miami, Florida*, 5 FCC Rcd 4893, 4900 n.14; *Michigan/Ohio*, 3 FCC Rcd 6944, 6950 n.22 (1988).

10. Based on the foregoing, we find that grant of the transfer of control applications will serve the public interest, convenience, and necessity. Accordingly, IT IS ORDERED That the request of Evergreen Media Corporation for a temporary twelve month waiver of 47 C.F.R. § 73.3555 to permit common ownership of WMVP(AM), Chicago, Illinois, WLUP-FM, Chicago, Illinois, WRCX(FM), Chicago, Illinois, WEJM(AM), Chicago, Illinois, WJPC-FM, Lansing, Illinois and WVAZ(FM), Oak Park, Illinois, IS HEREBY GRANTED, subject to the condition that within twelve months from the adoption date of this decision that Evergreen has filed an application for Commission consent to assign two of the following FM licenses to a new party: WLUP-FM, WRCX(FM), WJPC-FM, WVAZ(FM). Moreover, because Evergreen is otherwise qualified and the public interest would be served thereby, IT IS FURTHER ORDERED, That the applications to transfer control of MLGAL Partners, L.P. and its subsidiaries: BPI Chicago License Subsidiary, Inc., licensee of WVAZ(FM), Oak Park, Illinois, File No. BTCH-950201GH, WEJM(AM), Chicago, Illinois, File No. BTC-950201GI, and WJPC-FM, Lansing, Illinois, File No. BTCH-950201GJ; BPI Charlotte License Subsidiary, Inc., licensee of WBAV(AM), Charlotte, North Carolina, File No. BTC-950201GK, WBAV-FM, Gastonia, North Carolina, File No. BTC-950201GL, and WPEG(FM), Concord, North Carolina, File No. BTC-950201GM; BPI Dallas License Subsidiary, Inc., licensee of KSKY(AM), Balch Springs, Texas, File No. BTC-950201GN; BPI New York License Subsidiary, the licensee of WYNY-FM, Lake Success, New York, File No. BTC-950201GO; BPI Detroit License Subsidiary, Inc., licensee of WDOZ(AM) and WNIC(FM), Dearborn, Michigan, File Nos. BTC-950201GP and BTCH-950201GQ and WKQI(FM), Detroit, Michigan, File No. BTCH-950201GR, to Evergreen Media Corporation, ARE HEREBY GRANTED to the extent indicated herein. IT IS FURTHER ORDERED That the informal objection filed March 2, 1995 by David Naylor IS HEREBY DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 93-179

In the Matter of

Price Cap Regulation of
Local Exchange Carriers

Rate-of-Return Sharing
and Lower Formula Adjustment

REPORT AND ORDER

Adopted: March 30, 1995; Released: April 14, 1995

By the Commission:

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I. INTRODUCTION

A. Summary

1. Under the Commission's current system of price cap regulation, local exchange carriers (LECs) whose interstate earnings in a calendar year exceed specified benchmarks are required to share with ratepayers part or all of the earnings above the benchmarks. This sharing is accomplished through a one-time (non-permanent) reduction in their price cap indices at the next annual access tariff filing. The current price cap rules also permit LECs whose earnings fall below a specified low-end benchmark during a calendar year to make a (non-permanent) one-time upward adjustment to their price cap indices at the next annual filing. The upward adjustment is intended to permit the LEC to raise its interstate rates to levels that will enable the LEC to increase its interstate earnings to the low-end benchmark. These mechanisms are known as sharing and low-end adjustments. In this order, we consider revisions to our price cap rules to specify the manner in which these adjustments should be treated by the LECs in computing their interstate earnings for the year in which the sharing or low-end adjustment is effected.

2. The Commission previously adopted a refund mechanism for LECs subject to rate-of-return regulation. Under that scheme, LECs were required to refund earnings that exceeded the prescribed maximum allowable rate of return, plus a buffer, through rate reductions in a subsequent tariff filing period. LECs subject to rate-of-return regulation were required to treat those refund payments as adjustments to earnings for the period in which the overearnings occurred, known as the enforcement period, rather than to the period in which the refund is paid.[1] These LECs therefore were required to "add back" the amount of FCC-ordered refunds relating to the previous enforcement period into the total earnings used to compute the rate of return for the current new enforcement period.[2] The refund thus has the same effect on earnings measurement

[1] Amendment of Part 65, Interstate Rate of Return Prescription: Procedures and Methodologies to Establish Reporting Requirements, 1 FCC Rcd 952, 956-57 (1986) (*Rate of Return Procedures*). The rate-of-return monitoring report filed by LECs that are not subject to price cap regulation, FCC Form 492, includes a line to record the amount of the refund. *Id.* at 960-61, Appendix C.

[2] Section 65.600 of the Commission's Rules, 47 C.F.R. § 65.600.

that it would have if the LEC wrote a check for the amount of the overearnings on the last day of the enforcement period during which the overearnings occurred.

3. A brief example illustrates how an add-back adjustment under price caps works. Suppose a LEC earned $400 million from its interstate operations in 1994, with $100 million of that amount subject to a 50 percent sharing obligation. Pursuant to our rules, the LEC would be required to flow back $50 million to its ratepayers in 1995. If the LEC replicates its 1994 performance in 1995 by earning $350 million (*i.e.*, $400 million minus the $50 million sharing adjustment), should it be allowed to say that it must only share half of $50 million in the next tariff year, not $100 million, because it refunded $50 million to consumers in 1995 due to its 1994 performance? It is clear that under our reporting rules for carriers subject to rate-of-return regulation, the answer is "no"; in this order, we conclude that the answer is also "no" prospectively for companies subject to price cap regulation.

4. For the reasons set forth below, we conclude that we should amend our rules to include an express requirement that price cap LECs make an analogous "add-back" adjustment to their interstate revenues when calculating earnings used to determine sharing and low-end adjustments for a year that follows a year in which a LEC incurred a sharing obligation or made a low-end adjustment.[3] Accordingly, we adopt the rule proposed in our Notice of Proposed Rulemaking to incorporate explicitly the "add-back" requirement into our price cap rules.[4]

B. Background

5. On September 19, 1990, the Commission replaced rate-of-return regulation with an incentive-based system of regulation, known as price caps, for the nation's largest local exchange carriers.[5] In designing the LEC price cap plan, the Commission's objective was to harness the profit-making incentives common to all businesses in order to advance the public interest goals of just, reasonable, and non-discriminatory rates, as well as a communications system that offers innovative, high quality services.[6]

6. Under the LEC price cap plan, a carrier's interstate services are grouped within baskets. Each basket is subject to a price cap index (PCI) that is designed to limit the prices carriers charge for service.[7] The PCI is adjusted annually to account for three factors. The first is a measure of inflation -- the Gross National Product - Price Index (GNP-PI). The second, a 3.3 percent offset, captures the amount by which annual LEC efficiency gains have historically exceeded efficiency gains achieved in the economy as a whole, as measured by the GNP-PI. In lieu of the base 3.3 percent offset, a LEC may elect the more challenging 4.3 percent offset. LECs that can outperform the offset that they select are rewarded with the ability to retain reasonably higher earnings than would be allowed under the former cost-of-service regulatory system.[8] The third element allows the value of the PCI to move up or down in response to specific exogenous cost changes. The cap generally is calculated once a year, for LEC tariffs that become effective on July 1.[9]

C. Sharing and Low-end Adjustment Mechanisms

7. Recognizing that the uniform base 3.3 percent productivity factor might not be an accurate measure of productivity for all LECs, the Commission adopted the sharing and low-end adjustment mechanisms that are based on a carriers's earned rate of return.[10] The Commission designed the sharing and low-end adjustment mechanisms to ensure that LECs and their customers share fairly the risks and rewards of future productivity gains. Noting that LEC price cap regulation is intended to produce rates of return within a "zone of reasonableness," the Commission stated that under the sharing mechanism, LEC earnings in excess of a specified return would be shared with, or returned to ratepayers.[11] Similarly, if a LEC's earnings fell below a specified floor, the low-end adjustment mechanism permits the LEC to raise its PCI so that it may raise its rates to target the specified floor rate of return. The Commission stated that the low-end adjustment mechanism was intended to prevent any price cap LEC from experiencing such low earnings over an extended period of time that its ability to provide quality service and attract capital at reasonable rates would be seriously impaired.[12]

8. Under the sharing mechanism, a LEC that selects and outperforms the 3.3 percent productivity offset is entitled to retain all of its earnings up to 1 percent above the 11.25

The net rate of return after a carrier adds back these amounts determines compliance with the prescribed rate of return during the new enforcement period and the amount of any refund obligation. Section 65.700-03 of the Commission's Rules, 47 C.F.R. § 65.700-03; *see also Rate of Return Procedures*, 1 FCC Rcd at 956 (The Commission stated that the add-back adjustment "should provide a clear picture of current earnings for the reporting period.").

[3] We do not decide in this rulemaking whether an add-back adjustment is required for purposes of the 1993 and 1994 Annual Access Tariff Filings. That issue is under examination as part of our investigation of the 1993 and 1994 Annual Access Tariff Filings. *See* 1993 Annual Access Tariff Filings, CC Docket No. 93-193, 8 FCC Rcd 4960 (Com. Car. Bur. 1993); *see also* 1994 Annual Access Tariff Filings, CC Docket No. 94-65, 9 FCC Rcd 3519 (Com. Car. Bur. 1994).

[4] Price Cap Regulation of Local Exchange Carriers, Rate of Return Sharing and Lower Formula Adjustment, 8 FCC Rcd 4415, Appendix B (1993) (*NPRM*).

[5] Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, 5 FCC Rcd 6786 (1990) (*LEC Price Cap Order*), Erratum, 5 FCC Rcd 7664 (Com. Car. Bur. 1990), *modified on recon.*, 6 FCC Rcd 2637 (1991) (*LEC Price Cap Reconsideration Order*), *aff'd sub nom.*, National Rural Telecom Ass'n v. FCC, 988 F.2d 174 (D.C. Cir. 1993) (*LEC Price Cap Orders*). Specifically, the LEC price cap system is mandatory for the seven Regional Bell Operating Companies Commission and GTE. It is optional for other LECs.

[6] *LEC Price Cap Order*, 5 FCC Rcd at 6787.

[7] *Id.*

[8] *LEC Price Cap Order*, 5 FCC Rcd at 6792.

[9] *Id.*

[10] The Commission stated that "individual LECs may experience significant variations from the industry productivity norm . . . as a result of regional economic booms or recessions, among other factors." *Id.* at 6801. The Commission determined that "[t]hese possible sources of errors in the productivity offset support the adoption of [sharing and low-end adjustment mechanisms]." *Id.*

[11] *Id.* at 6787.

[12] *Id.* at 6787, 6801, 6802; *see also LEC Price Cap Reconsideration Order*, 6 FCC Rcd at 2677.

percent earnings threshold[13] (*i.e.*, 12.25 percent).[14] A LEC using the 3.3 percent productivity offset must share with its customers half of its earnings between 12.25 percent and 16.25 percent, and all of its earnings in excess of 16.25 percent.[15] The sharing mechanism effectively allows a LEC selecting a 3.3 percent productivity offset to reach a maximum 14.25 percent rate of return.[16] Alternatively, a LEC selecting the higher 4.3 percent productivity offset may retain all of its earnings up to 13.25 percent and halfof all higher earnings up to 17.25 percent. All earnings that exceed 17.25 percent must be returned to ratepayers. By electing a productivity offset of 4.3 percent, a LEC can realize a 15.25 percent rate of return.[17] The customers' share is returned with interest through a one-time reduction in the PCI for the next annual access period, calculated in the same manner as other exogenous changes in the formula.[18] The Commission stated that the sharing mechanism would "operate[] only as a one-time adjustment to a single year's rates, so a LEC would not risk affecting future earnings . . . ."[19]

9. Under the low-end adjustment mechanism, if the earnings of a LEC fall below 10.25 percent in a base year, the LEC may raise its PCI, and consequently its rates, in the following year to target earnings at 10.25 percent, using the base period to compute the amount of the adjustment to the PCI.[20] The low-end adjustment mechanism operates as a one-time adjustment to a single year's rates, "in keeping with the one-year adjustments made to effect sharing."[21]

10. The first application of the sharing and low-end adjustment mechanisms occurred in the 1992 annual access tariff filings. LECs with earnings levels in the 1991 calendar year above 12.25 percent lowered their price cap indexes by a total of $76.8 million in 1992 because of the sharing requirement, while LECs with earnings below 10.25 percent in 1991 increased their indexes by a total of $96.6 million in 1992 because of the low-end adjustment mechanism. The 1993 annual access tariff filings required the Commission to determine how the sharing and low-end adjustments to the price cap indexes in 1992 should be reflected in the LECs' 1992 earnings figures used to determine necessary sharing and permitted low-end adjustments for tariff year 1993-94.

11. Some of the price cap LECs proposed that the earnings levels used to compute sharing and low-end adjustments to be implemented in 1993 should include the effects of the sharing and low-end adjustments for 1992, without the add-back adjustment. This would reduce sharing amounts in 1993 for LECs who were also subject to sharing in 1992. Other LECs proposed to adjust their earnings to include the amount associated with the add-back adjustment. This approach would allow higher rates in 1993 for LECs that had received a low-end adjustment in 1992.

12. To address this and other issues raised by the 1993 annual access rates filings, the Commission suspended rates filed by price cap LECs for one day, issued an accounting order, and initiated an investigation.[22] That investigation is examining how under the existing price cap rules the sharing and low-end adjustments made to 1993 rates because of earnings in the 1992 access year should be reflected in the rate of return used to determine the 1994 sharing and low-end adjustments. The general issue of add-back adjustments, however, was the subject of the *NPRM* adopted in this proceeding shortly before those tariffs took effect.

II. NPRM, COMMENTS, AND DISCUSSION

A. Add-back Adjustment

13. We use the term "add-back adjustment" to describe the process that eliminates the effects of sharing or low-end adjustments required by the prior year's earnings on the current year's earnings. The process requires a price cap LEC to add an amount equal to the sharing adjustment amount to its current year revenues before calculating a LEC's rate of return for the current year. If a low-end adjustment was made in the prior year, the amount of the adjustment is subtracted from the current year's revenues before computing earnings for the current year. The current year's earnings, thus adjusted, determine whether sharing is required, or a low-end adjustment is permitted, in the next tariff year.

14. In general, adding an amount equal to the sharing adjustment to the earnings calculation increases a LEC's earnings level for purposes of determining its sharing and lower- end adjustments in the following year. By excluding low-end adjustment amounts from the earnings calculation, the LECs' earnings level used to compute the following

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[13] The initial 11.25 percent level corresponded to the rate of return established for rate of return carriers in *Represcribing the Authorized Rate of Return for Interstate Service of Local Exchange Carriers*, 5 FCC Rcd 7507 (1990) (*Represcription Order*). *See LEC Price Cap Order*, 5 FCC Rcd at 6788, 6802.

[14] *LEC Price Cap Order*, 5 FCC Rcd at 6788.

[15] *Id.* at 6801.

[16] *Id.*

[17] *Id.* at 6788, 6801-02; *see also LEC Price Cap Reconsideration Order*, 6 FCC Rcd at 2652; *see generally LEC Price Cap Order*, 5 FCC Rcd at 6803 ("The additional profit incentive created for LECs that elect a 4.3 percent productivity incentive will have a permanent effect on the LEC, because the higher factor will be reflected in the LEC's PCI in future years.").

[18] *LEC Price Cap Order*, 5 FCC Rcd at 6801; *see also id.* at 6788; *see also LEC Price Cap Reconsideration Order*, 6 FCC Rcd at 2686. The shared amounts are calculated on the basis of total interstate earnings. *LEC Price Cap Order*, 5 FCC Rcd at 6805; *see also LEC Price Cap Reconsideration Order*, 6 FCC Rcd at 2680.

[19] *LEC Price Cap Order*, 5 FCC Rcd at 6803; *see also id.* at 6788 (in adopting the sharing mechanism, the Commission decided not to adopt the previously considered "automatic upper stabilizer" device because it "would have created *permanent* downward adjustments to the cap each time earnings rose above a specified level") (emphasis added); *id.* at 6802 ("[The upper stabilizer device] would have required an automatic adjustment in a particular LEC's PCI if that LEC achieved a rate of return for an annual price cap period that differed from the target rate of return prescribed for LECs that are not subject to price caps by more than 2 percent").

[20] *Id.* at 6788; *see also id.* ("Should a LEC's earnings drop below . . . [10.25 percent], that LEC is entitled to a prospective automatic upward adjustment to its cap."); *see also id.* at 6802 ("We . . . set the lower adjustment mark at 10.25 percent, to be symmetrical with the 12.25 percent top of the no sharing zone.").

[21] *LEC Price Cap Reconsideration Order*, 6 FCC Rcd at 2691 n.166.

[22] *See* 1993 Annual Access Tariff Filings, 8 FCC Rcd 4960 (Com. Car. Bur. 1993); *see also* 1994 Annual Access Tariff Filings, 9 FCC Rcd 3519 (Com. Car. Bur. 1994).

year's sharing and low-end adjustments would generally be lowered to the level that earnings would have reached if there had been no low-end adjustment.

1. NPRM Discussion of Add-back Adjustment

15. On June 18, 1993, the Commission adopted a Notice of Proposed Rulemaking requesting comment on our tentative conclusion that the price cap LECs should continue to be required to "add back" sharing and low-end adjustments when calculating their rates of return in the year following those adjustments, and that the price cap rules should be amended to include explicitly the add-back requirement.[23] In the *NPRM*, we said that, while we "believe[d] that add-back' is more consistent with the price cap plan as it was adopted, we recognize[d] that this issue was neither expressly discussed in the LEC price cap orders nor clearly addressed in our Rules." We, therefore, proposed to amend the price cap rules to incorporate the "add-back" requirement.[24] We proposed specific language to clarify our rules and implement our tentative conclusion.[25] We also requested comment on whether a LEC that has set its rates below the price cap indexes during the base year should receive credit for the difference between its PCI and its actual price index (API) in calculating sharing and low-end adjustment amounts.[26]

16. We find that the add-back adjustment is a necessary element of the sharing and low-end adjustment mechanisms. Therefore, we adopt a rule explicitly incorporating the add-back process into the LEC price cap plan. In addition, we decide that our rules should not be modified to provide LECs with credit for below-cap rates incalculating sharing and low-end adjustment amounts.

2. Add-back Adjustment Discussion and Comments

a. An add-back adjustment to price cap revenues produces the same results that a refund under rate-of-return regulation produces.

17. As summarized above, under rate-of-return regulation, a refund of overearnings would be treated as if it were paid on the last day of the period in which the overearnings occurred, notwithstanding that the refund is actually paid out during the succeeding enforcement period. Consequently, the refund amount is added to a carrier's revenues for purposes of computing its earnings during the period in which the refund actually was paid. Under the LEC price cap system of regulation, we have designed our sharing and low-end adjustment mechanisms around benchmark earning levels. The Commission emphasized in the *LEC Price Cap Order* that the sharing and low-end adjustment mechanisms are intended to be one-time adjustments to a carrier's earnings, in the same way that the refund mechanism operates under rate-of-return regulation.[27]

18. The following example illustrates the effects of an add-back adjustment under our current price cap rules and shows that the adjustment is a necessary component of the sharing adjustment mechanism. The example examines the effects of different regulatory requirements on a company that in the base year has revenues of $2425, expenses of $1000, and a rate base of $10,000. Therefore, the company's base year return (*i.e.*, revenues minus expenses) is $1425 ($2425 minus $1000). The company's rate of return (ROR) (*i.e.*, return divided by rate base) is 14.25 percent ($1425 divided by $10,000).

19. Assume first that a company under rate-of-return regulation is required to refund earnings above a 13.25 percent rate of return, measured on a calendar year basis and that the company earns 14.25 percent in year 1. Assume further that the company makes its refunds through a refund check that is issued on the last day of year 1 rather than by reducing its rates in the coming year. The following chart shows the effects of the refund requirement on the company in years 1 through 4, assuming constant revenues, expenses and rate base.

	Year 1	Year 2	Year 3	Year 4
Revenues	2,425	2,425	2,425	2,425
Expenses	1,000	1,000	1,000	1,000
Rate Base	10,000	10,000	10,000	10,000
ROR	14.25	14.25	14.25	14.25
Refund	100	100	100	100
ROR (net of regulation)	13.25	13.25	13.25	13.25

As this example shows, because the company refunds the money owed at the end of the year in which the liability is incurred, no adjustment is necessary to its revenues in the following year.

20. Assume now that the same company is instead subject to a sharing obligation with an add-back requirement. Assume further that the company is required to share 50 percent of its earnings above a 12.25 percent rate of return. The following chart shows the effect of the add-back requirement on the company in years 1 through 4, again assuming constant revenues, expenses and rate base.

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[23] *NPRM*, 8 FCC Rcd at 4417; *see also id.* ("[W]e tentatively conclude that the add-back adjustment should continue to be part of the rate of return calculations of LECs subject to price caps").

[24] *Id.* at 4415; *see also id.* at 4416 (The *NPRM* stated that "add-back appears necessary to the rate of return thresholds applied to determine price cap LECs' sharing obligations and lower adjustments right[s] . . . .").

[25] *See id.* at Appendix B the Commission proposed revising Section 61.3(e) of the Commission's Rules, 47 C.F.R. § 61.3(e), which defines the term "Base Period," to add that "[b]ase year or base period earnings shall not include amounts associated with exogenous adjustments to the PCI for the sharing or lower formula adjustment mechanisms.")

[26] *Id.* at 4417.

[27] *LEC Price Cap Order*, 5 FCC Rcd at 6803 (sharing and low-end adjustments should "operate[] only as . . . one-time adjustment[s] to a single year's rates, so a LEC . . . [does] not risk affecting future earnings"); *LEC Price Cap Reconsideration Order*, 6 FCC Rcd at 2691 n.166.

Add-Back Adjustment

	Year 1	Year 2	Year 3	Year 4
Revenues	2,425	2,325	2,325	2,325
Expenses	1,000	1,000	1,000	1,000
Rate Base	10,000	10,000	10,000	10,000
Add-back	0	100	100	100
ROR with Add-back	14.25	14.25	14.25	14.25
Sharing	100	100	100	100
ROR (net of regulation)	14.25	13.25	13.25	13.25

By including an add-back adjustment to its earnings in Year 2 and thereafter, the company has the same rate of return and returns the same amount of money to ratepayers as the rate-of-return regulated company that makes its refund by a check. The add-back adjustment measures the company's performance in year 2 and each subsequent year after eliminating the effect of its performance in the prior year from the calculation of the current year's earnings.

21. Contrast the foregoing results with those that occur if the same company is subject to a sharing obligation, but without an add-back requirement.

No Add-Back Adjustment

	Year 1	Year 2	Year 3	Year 4
Revenues	2,425	2,325	2,375	2,350
Expenses	1,000	1,000	1,000	1,000
Rate Base	10,000	10,000	10,000	10,000
ROR	14.25	13.25	13.75	13.50
Sharing to be returned in next year	100	50	75	62.50

Under this scenario, the company shares fewer revenues than it would under the rate-of-return or add-back scenarios and earns a different rate of return each year, even though its financial performance and underlying costs did not change.

22. The foregoing examples show that adding back an amount equal to the sharing adjustment ensures that the earnings thresholds applied to determine price cap LECs' sharing obligations are those we intended when we adopted these mechanisms. In the example presented above, the add-back requirement ensures that a price cap carrier incurs the same sharing obligation ($100) in year 2 as a carrer that paid a refund on the last day of the year in which the obligation was incurred. Without an add-back requirement, the price cap carrier would share a lower amount ($50) of its earnings from year 2, because the carrier would reduce its earnings in year 2 by the amount of the sharing obligation incurred in the prior year. That result would permit LECs to avoid or reduce their sharing obligations in year 2 if their unadjusted rate of return exceeded the sharing benchmarks established by our price cap rules.

23. It bears emphasis that a sharing adjustment under price caps operates very much like a refund under rate-of-return regulation in that the obligation arises because of the previous year's high earnings. Further, both the sharing adjustment and the refund occur in the year after the year in which the high earnings were realized. In both cases, ignoring the effects of a sharing adjustment will make a LEC's earnings, and therefore its productivity, appear to be lower than it actually is during the year in which the sharing amount is flowed through to ratepayers.

24. A comparison of three scenarios involving a low-end adjustment similarly shows that an add-back adjustment is necessary to produce the results that we intended for price cap companies. These scenarios assume a company that has revenues of $1925, expenses of $1000 and a rate base of $10,000.

25. Assume first that the company receives its low-end adjustment through a check issued to it on the last day of the year in which the low earnings occur.

	Year 1	Year 2	Year 3	Year 4
Revenues	1,925	1,925	1,925	1,925
Expenses	1,000	1,000	1,000	1,000
Rate Base	10,000	10,000	10,000	10,000
ROR	9.25	9.25	9.25	9.25
LowEnd Adj	100	100	100	100
ROR with Adj	10.25	10.25	10.25	10.25

26. Now assume that the same company is instead subject to a low-end adjustment mechanism with an add-back requirement.

Add-Back Adjustment

	Year 1	Year 2	Year 3	Year 4
Revenues	1,925	2,025	2,025	2,025
Expenses	1,000	1,000	1,000	1,000
Rate Base	10,000	10,000	10,000	10,000
ROR	9.25	10.25	10.25	10.25
Add-back	0	-100	-100	-100
LowEnd Adj	100	100	100	100
ROR with Add-back	9.25	9.25	9.25	9.25

As in the sharing example, the company that makes an add-back adjustment to its revenues in the second year to account for the low-end adjustment incurred in the first year has the same rate of return and receives the same amount of money as the company under rate-of-return regulation that receives its low-end adjustment through a check issued at the end of year 1.

27. Contrast those results with the effect of a low-end adjustment mechanism without an add-back adjustment on the same company.

No Add-Back Adjustment

	Year 1	Year 2	Year 3	Year 4
Revenues	1,925	2,025	1,925	2,025
Expenses	1,000	1,000	1,000	1,000
Rate Base	10,000	10,000	10,000	10,000
ROR	9.25	10.25	9.25	10.25
LowEnd Adj to be re-gained in next year	100	0	100	0

Under this approach, the company receives less revenues for the low-end adjustment than it would under the two other approaches illustrated above and would report a different rate of return each year, even though its financial performance and underlying costs did not change.

28. Without an add-back adjustment, LECs that make low-end adjustments because of prior years' low earnings would be entitled to smaller adjustments if their current year's earnings fell below the low end of the range. As our example shows, ignoring the amount ($100) paid to the carrier as a low-end adjustment for the prior year would inflate the carrier's earnings in year 2. Over time, effective earnings could fall below or above the benchmark levels that we established as an integral part of our initial price cap regulatory regime. For example, the LECs' unadjusted 1993 rates of return used to compute 1994 sharing and lower- end adjustments would on average be 0.2 percent higher at the upper end, and 0.5 percent lower at the low end than if adjusted. The add-back adjustment, however, corrects these deviations and ensures that the LECs' earnings fall within the range we selected in the *LEC Price Cap Order*.

b. Add-back is a necessary part of the sharing and low-end adjustment mechanisms.

29. NYNEX and AT&T agree with the Commission's tentative conclusion that price cap LECs should be required to include sharing and low-end adjustment amounts when calculating their earnings for the subsequent year.[28] Also, NYNEX contends that the inclusion of these amounts is necessary to ensure that sharing and low-end adjustments operate as one-time adjustments.[29] NYNEX asserts that failure to offset the effect of sharing and low-end adjustment revenues would undermine the earnings ranges in the sharing and low-end adjustment mechanisms.[30]

30. SNET concurs with the Commission that an offset equal to any low-end adjustment add-back is necessary to maintain the proper relationship between earnings levels and performance in a prior year, and argues that without this adjustment, artificial swings in earnings can occur.[31] MCI claims that sharing amounts "must be added back in order to properly calculate rates of return . . . ."[32]

31. Other commenters, however, disagree in whole or in part with the Commission's tentative conclusion. Some of the commenters claim that the Commission intended price caps to be a departure from rate-of-return regulation.[33] They contend that a refund under rate-of-return regulation cannot be analogized to a sharing obligation under price caps because the former is a product of overearnings and is based on a finding that rates are unlawfully high, whereas the latter is the result of lawful earnings within the sharing zones.[34]

32. One of the basic elements of the current price cap plan for LECs is the requirement that carriers share with ratepayers efficiency gains that exceed the benchmarks established in the *LEC Price Cap Order*.[35] As already noted, the Commission chose rate-of-return as the measure for determining when annual efficiency gains warranted sharing. The Commission even centered the earnings thresholds that triggered sharing and low-end adjustments on the 11.25 percent rate of return prescribed for LECs subject to rate-of-return regulation. We also noted above that the sharing mechanism serves the same function under price cap regulation that a refund mechanism performs under rate-of-return regulation. That is, both mechanisms are designed to return to ratepayers in year 2 a portion of the carrier's earnings from the prior year. Accordingly, we find that the policies and rules governing the calculation of refunds under rate-of-return regulation are relevant by analogy to the calculation of those earnings thresholds. We also find that an add-back requirement is not only fully consistent with, but also an essential element of, the system of price cap regulation that we adopted for LECs in 1990. We note, moreover, that in adopting the *LEC Price Cap Order*, the Commission did not state that it intended to eliminate the requirement under rate-of-return regulation that carriers subtract revenues reflecting out-of-period earnings for purposes of calculating current year earnings.

33. Several commenters argue that requiring LECs to make an add-back adjustment would cause a single year's rate-of-return adjustment to have an impact on sharing requirements and low-end adjustment rights in future years, a result which they contend is inconsistent with the Commission's intention that sharing and low-end adjustment mechanisms operate as one-time adjustments.[36] Bell

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[28] NYNEX Reply Comments at 2; AT&T Comments at 1-2.

[29] NYNEX Reply Comments at 14-15.

[30] *Id.* at 5.

[31] SNET Comments at 1-3. SNET does not address whether a sharing add-back should be required under the LEC price cap plan.

[32] MCI Comments at 6.

[33] *See* Ameritech Comments at 2; *see also* Bell Atlantic Comments at 5; GTE Comments at 3, 9; Pacific Comments at 1-2; RTC Comments at 2; US West Comments at 4.

[34] Pacific Comments at 2; *see also* RTC Comments at 2; Ameritech Comments at 2; US West Comments at 4; GTE Comments at 10; BellSouth Reply Comments at 11; Bell Atlantic Reply Comments at 4.

[35] *See LEC Price Cap Order*, 5 FCC Rcd at 6801; *see also LEC Price Cap Reconsideration Order*, 6 FCC Rcd at 2676-77.

[36] *See* Bell Atlantic Comments at 2 n.5; *see also* Ameritech Comments at 6; GTE Comments at 7; Pacific Comments at 4; US West Comments at 2.

In support of its claim that add-back adjustments "can cause a single year's sharing to impact a company year after year[,]" Bell Atlantic provides the example of a LEC that earns total

Atlantic and Ameritech claim that a company that would otherwise not be sharing based on its "actual" earnings during a base year (*i.e.*, earnings without add-back) could be required to share in the subsequent year based solely on the add-back adjustment.[37] In addition, Bell Atlantic argues that an add-back adjustment effectively operates like the automatic stabilizer rejected by the Commission when it adopted LEC price caps.[38]

34. Contrary to the commenters' contention, an add-back adjustment, by removing the effects of sharing and low-end adjustments associated with the previous year's earnings, ensures that these adjustments function as "one-time adjustment[s] to a single year's rates."[39] An add-back adjustment therefore ensures that the sharing and low-end adjustment mechanisms operate as intended. Contrary to the claims of Bell Atlantic and Ameritech, computation of a LEC's sharing obligation and low-end rights in a current year based upon actual, unadjusted earnings (*i.e.*, without the add-back adjustment) would cause the prior year's sharing and low-end adjustments to be reflected in the LEC's current earnings levels. Consequently, instead of affecting a LEC's earnings for only one year, as contemplated by our price cap rules, the sharing and low-end adjustment would affect its earnings, and possibly its sharing obligations and/or low-end adjustment rights, in future years as well. For example, assume that a LEC experiences a substantial, one-time efficiency gain in year 1 so that its earnings significantly exceed the benchmarks. Assume further that the same carrier achieves much more modest efficiency gains in the next year. If the LEC's earnings in the second year are not adjusted to remove the effects of a sharing adjustment, its unadjusted earnings could fall below the low-end benchmark. In that event, the carrier would be entitled to make an upward adjustment to its indices, and consequently its rates, in the third year solely because of its sharing obligation in the second year.

35. The fact that a company that would otherwise not be sharing based on its unadjusted earnings could be required to share as a result of the adjustment does not demonstrate that requiring the add-back adjustment is unreasonable. Bell Atlantic mischaracterizes the cause of the sharing in these circumstances. Sharing does not arise because of an add-back adjustment, but rather because the LEC's earning levels in each year, *once adjusted to remove the effects of a sharing obligation generated by a previous year's high earnings*, remain in the sharing zone. Bell Atlantic's argument ignores our expressed intent that the sharing mechanism act as a one-time adjustment to a previous year's high earnings. We adopt the add-back mechanism precisely to ensure that the effect of a one-time sharing or low-end adjustment does not have a ripple effect from year to year. Bell Atlantic's view, if adopted, would enable a LEC to reduce any further sharing obligations by implementing the sharing obligation created by the first year's high earnings. This is contrary to our expressed intent that the sharing mechanism operate as a one-time adjustment to a single year's rates, and we decline to accept it here. Bell Atlantic's related argument concerning the automatic upper-end stabilizer mechanism confuses that mechanism, which the Commission rejected in the price cap rulemaking proceeding, with the sharing adjustment mechanism. Simply stated, the stabilizer would have resulted in a "permanent" downward adjustment to a LEC's PCI,[40] whereas the sharing adjustment was intended to operate as a one-time adjustment to a LEC's PCI. The add-back adjustment ensures that the sharing mechanism and the low-end adjustment mechanism operate as the Commission intended.

36. MCI argues that an adjustment to offset a low-end adjustment in a prior year should not be allowed because this kind of adjustment does not apply to rate increases under rate-of-return regulation.[41] MCI, BellSouth, and Bell Atlantic contend that an adjustment to offset a low-end adjustment would guarantee that price cap LECs earn a minimum 10.25 percent rate of return, a guarantee that they maintain does not exist under rate-of-return regulation and was rejected in the *LEC Price Cap Reconsideration Order*.[42] In addition, MCI asserts that with a low-end adjust-

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revenues of $2,616 million in the base year and, as a result of a sharing adjustment, earns total revenues of $2,590 million in the second year. Bell Atlantic Comments at 2-3 and Workpapers 1-1 and 1-2. In Bell Atlantic's hypothetical, the LEC maintains its API equal to its PCI, generates total revenues of $2,590 million in the third and subsequent years and earns a rate of return of 12.25 percent without an add-back adjustment. Bell Atlantic's hypothetical, which takes into account taxes and interest, indicates that if the LEC were subject to an add-back requirement, it would incur sharing obligations equal to $23 million in the base year, and $7 million, $9 million, $5 million, and $3 million, for the second, third, fourth, and fifth years. Bell Atlantic contends that the add-back requirement causes the LEC to incur sharing obligations in the third year and each year thereafter, despite the fact that the LEC's unadjusted earnings in those years would not trigger a sharing obligation. Bell Atlantic claims that the LEC's sharing obligation in the third and subsequent years is caused by the initial add-back calculation in the second year.

[37] Bell Atlantic Comments at 2; Ameritech Comments at 6.

[38] Bell Atlantic Reply Comments at 4; *see also supra* fn.19.

[39] *LEC Price Cap Order*, 5 FCC Rcd at 6803; *LEC Price Cap Reconsideration Order*, 6 FCC Rcd at 2691 n.166.

[40] *See LEC Price Cap Order*, 5 FCC Rcd at 6788 ("[I]n adopting the one-time sharing adjustment mechanism, the Commission considered and rejected an automatic upper stabilizer' that] would have created *permanent* downward adjustments to the cap each time earnings rose above a specified level") (emphasis added); *see also id.* at 6803.

[41] MCI Comments at 11-12. Stating that MCI's bifurcated position on the add-back adjustment coincides with MCI's financial interests, several commenters argue that both the sharing and low-end adjustment mechanisms were intended to compensate for unanticipated errors in the productivity offset and must be treated identically. GTE Reply Comments at 11; BellSouth Reply Comments at 12; Ameritech Reply Comments at 3; Bell Atlantic Reply Comments at 4.

[42] MCI Comments at 3, 12-14; BellSouth Reply Comments at 8; Bell Atlantic Comments at 3-4. Bell Atlantic asserts that the add-back procedure causes a single year's low-end adjustment to "provid[e] a multi-year compounded benefit . . . produc[ing] a guaranteed return of almost 10 percent without any productivity gain." *Id.* In support, Bell Atlantic's ubmits workpapers allegedly comparing and contrasting the effects of a low-end adjustment. *See* Bell Atlantic Comments, Workpapers 1-3 and 1-4. These comparisons are flawed because, as NYNEX points out, Bell Atlantic includes different productivity changes in Workpaper 1-4 to produce the same underlying rates of return as in Workpaper 1-3. Therefore, these examples do not support Bell Atlantic's assertion.

ment add-back, revenues attributable to low-end adjustment rate increases would never be included in the calculation of base period earnings.[43]

37. These arguments raised by MCI, BellSouth, and Bell Atlantic relating to the low-end adjustment mechanism misapprehend how the add-back adjustment operates in a case in which a LEC in the prior year was permitted to increase its PCI to the level required to earn 10.25 percent. In calculating the current year's earnings, the LECs would be required to exclude the revenue effects of that upward PCI adjustment. Contrary to the claims of MCI, BellSouth and Bell Atlantic, the add-back adjustment does not guarantee that a LEC will earn 10.25 percent or any other particular rate of return in the current year. Assume, for example, that a carrier is permitted a low-end adjustment of $100 in year 2 to offset an equivalent shortfall below the benchmark low-end adjustment level in year 1. Assume further that in year 2 revenues remain constant, but costs increase by $100. In that event, a carrier's earnings in year 2 will fall below the low-end adjustment benchmark. In short, even with the add-back adjustment, a LEC's earnings may be equal to, greater or less than 10.25 percent. The add-back adjustment, however, does ensure that the low-end adjustment in the prior year operates only as a one-time adjustment to a LEC's PCI.

c. Add-back is consistent with the efficiency incentives of price caps.

38. US West contends that because add-back adjustments would "perversely" affect LECs that price below their PCIs, these adjustments would discourage LECs from doing so, a result contrary to the concept of incentive-based price cap regulation.[44] US West provides an example in which a LEC sets its API 10 percent below its PCI and incurs a sharing obligation in year one. In subsequent years, the LEC continues to price below its PCI and to incur sharing obligations. US West's example suggests that by including the shared amounts in calculating earnings in the next year, the LEC's adjusted rate of return and sharing amounts will continue to increase even though operational results do not change. US West asserts that eventually, the LEC's API will equal its PCI. At that point, US West argues, the LEC will be forced to reduce prices by a "disproportionate amount" in the next tariff year.[45]

39. The hypothetical example submitted by US West presents an unrealistic pricing and sharing fact pattern and, consequently, does not persuade us that add-back adjustments undercut the efficiency incentives of LEC price caps. US West submits no evidence to support its assumption that carriers that price substantially below their PCIs will incur sharing obligations. In addition, US West submits no evidence supporting the reasonableness of its assumption that carriers would continue to price below their caps and incur sharing obligations over a sustained period of time. We believe that in the unlikely situation a carrier intended to price as far below its PCI, as the US West example suggests, the LEC likely would select 4.3 percent as its productivity factor because the higher productivity factor would enable the LEC to retain a greater share of its earnings. If LECs over a sustained period of time were not only pricing below their PCIs, but also incurring sharing obligations (as in US West's example), those circumstances may indicate that our base productivity factor is too low, but does not demonstrate that add-back adjustments are inconsistent with our system of price cap regulation. The issues of whether the productivity factor selected in the *LEC Price Cap Order* should be revised, and whether the current 3.3 percent base factor is incorrect are being addressed as part of the LEC price cap performance review proceeding.[46] For these reasons, and because the Commission intended sharing adjustments to be one-time adjustments, US West does not convince us that add-back adjustments should not be required.

40. Ameritech argues that unlike a refund that relates to a prior year, sharing is a "forward-looking adjustment of the price cap LEC's productivity target . . . ."[47] Ameritech states that given this "fact, adding back the sharing amount actually distorts and hides the relationship between productivity performance (as measured by earnings) and the new price cap target for the year in which the sharing took place."[48] MCI asserts that an add-back requirement is not necessary to maintain the relationship between productivity performance and rate of return because low-end adjustment "revenues are intended to recover current period costs, not prior period costs."[49]

41. Ameritech mischaracterizes the nature and purpose of the sharing mechanism. A sharing adjustment is a "forward-looking adjustment" insofar as it corrects the past in the future. That is the nature of a correction. Specifically, a sharing adjustment is made in the year after high earnings are achieved. As discussed above, however, sharing operates very much like a refund in that the obligation to make a sharing adjustment arises because of the previous year's high earnings. Moreover, both the sharing adjustment and refund occur in the year after high earnings were realized. Contrary to MCI's assertion, low-end adjustment revenues are not designed to recover current period costs. Low-end adjustment revenues arise when the LEC raises its PCI because of the previous year's low earnings to allow a LEC the opportunity to earn a higher, yet reasonable, rate of return on a prospective basis. Application of the add-back adjustment avoids erroneously treating earnings increases attributable to that low-end adjustment as an increase in productivity. That is, if other variables (*e.g.*, expenses and investment base) were held constant and the LEC's earnings were not adjusted, the current price cap rules would regard the increase in the LEC's earnings in the following year as an increase in its productivity even though the earnings growth was solely attributable to the low-end PCI adjustment. Add-back adjustments avoid this distortion and, accordingly, ensure that the proper relationship between earnings and productivity growth is maintained.

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[43] MCI Comments at 3, 6-9.
[44] US West Comments at 7.
[45] *Id.* at 7-8 and 8, Table 1.
[46] *See* Price Cap Performance Review for Local Exchange Carriers, 9 FCC Rcd 1687 (1994) (*LEC Price Cap Performance Review NPRM*).
[47] Ameritech Comments at 4.
[48] *Id.*
[49] MCI Comments at 21.

d. An add-back adjustment is necessary to enforce earnings restrictions.

42. Ameritech asserts that the add-back mechanism is not necessary to keep earnings reasonable because "under price caps there is no maximum rate of return."[50] Contrary to Ameritech's assertion, there is a maximum allowable rate of return under the current LEC price caps scheme and the add-back mechanism is necessary to enforce that earnings restriction. A LEC choosing the 3.3 percent productivity offset is "effectively allow[ed] . . . to reach a maximum 14.25 percent rate of return[,]"[51] while a LEC choosing the 4.3 percent productivity offset "entitles itself to try to reach an effective maximum 15.25 percent rate of return."[52] An add-back mechanism is necessary to ensure that a LEC selecting the 3.3 or 4.3 percent productivity factor does not retain earnings above an effective 14.25 or 15.25 percent, respectively, in years following a sharing adjustment. Many commenters claim that an add-back adjustment would reduce the LECs' earning potential and, therefore, dampen their efficiency incentives.[53] This adjustment, like the sharing mechanism itself, only limits the price cap LECs' earnings potential, to the extent it forces LEC earnings to fall within the range established in the *LEC Price Cap Order*.

43. Ameritech contends that an add-back adjustment to offset sharing "would be effectively an accounting fiction. . . . that merely distorts the actual earnings of the price cap carrier -- giving them the appearance of being higher than they really are."[54] The sharing mechanism and add-back adjustment, however, have a common purpose, assuring that LECs and their customers share fairly the rewards of annual productivity gains. The add-back adjustment does this by eliminating the effects of sharing adjustments associated with the previous year's earnings.

44. Ameritech and GTE claim that there is no basis for the concern expressed by the Commission in the *NPRM* that artificial swings in earnings can occur without an add-back adjustment.[55] GTE asserts that the sharing mechanism was adopted not to produce smooth earnings, but to correct for any systematic bias in the productivity offset.[56] Ameritech argues that the see-saw effect is not "objectionable" because the variations in earnings become less erratic and "stabilize[] naturally" with the passage of time.[57]

45. We are not requiring add-back adjustments to produce "smooth earnings." One collateral effect of requiring such adjustments, however, will be the elimination of any artificial swings in earnings that otherwise would arise because of sharing or low-end adjustments attributable to earlier years' earnings. The possibility that the "see-saw" effect may eventually stabilize and become less erratic does not alter our conclusion that add-back adjustments serve the public interest by assuring that sharing and low-end adjustments are one-time adjustments without ripple effects from year to year.

e. Interest included in calculating sharing adjustments must be included in an add-back adjustment.

46. Ameritech and US West assert that if the Commission requires add-back adjustments, these adjustments should not include interest that was included in the sharing amounts.[58] In support, Ameritech and US West state that interest is designed to reimburse ratepayers for the opportunity cost of the delay in sharing the benefits of the LEC's productivity gains and that ratepayers receive the benefits of the interest amount during the period when the sharing adjustment is in effect.[59] Ameritech claims that if the interest amount is part of the add-back adjustment, "portions of this interest amount would be given back again in future sharing periods."[60]

47. Ameritech and US West appear to misunderstand the purpose behind and the goals of the sharing and add-back adjustments. The sharing mechanism returns to ratepayers their share of productivity gains plus interest through a one-time (non-permanent) reduction in the PCI.[61] We conclude that because interest is part of the sharing adjustment, failure to include interest when making an offsetting add-back adjustment would understate the amount of the actual sharing adjustment. Thus, failure to include interest in the add-back adjustment would cause sharing adjustments (to the extent of the interest amount) to be reflected in the LEC's future earnings levels, and consequently in calculations used to determine whether a LEC must make sharing and low-end adjustments in later years.[62]

f. Add-back is not a major change to the price cap plan.

48. Several commenters allege that an add-back adjustment would constitute a substantive change to (as opposed to a clarification of) the price cap rules and, therefore, cannot be applied retroactively to render existing LEC tariffs unlawful.[63] Several also assert that adoption of the add-back adjustment at this time would be inconsistent with the Commission's statement that it would make no "major adjustments" to the LEC price cap plan prior to the fourth-year comprehensive LEC price cap performance

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[50] Ameritech Comments at 5.

[51] *LEC Price Cap Order*, 5 FCC Rcd 6801.

[52] *Id.* at 6802.

[53] *See* Bell Atlantic Comments at 3 n.8; Pacific Comments at SWBT Comments at 2, 4; MCI Comments at 3; US West Comments at 1- 2; GTE Comments at 3; USTA Comments at 4.

[54] Ameritech Comments at 5-6.

[55] *Id.* at 5; GTE Comments at 13.

[56] GTE Comments at 13.

[57] Ameritech Comments at 5; *see also id.* ("[U]nder the split tariff/sharing year situation actually faced by price cap LECs, the sharing variations are much smaller and subside more quickly.").

[58] Ameritech Comments at 7; US West Reply Comments at 7.

[59] Ameritech Comments at 7.

[60] *Id.*

[61] *LEC Price Cap Order*, 5 FCC Rcd at 6801; *see also id.* at 6788; *see also LEC Price Cap Reconsideration Order*, 6 FCC Rcd at 2686.

[62] *LEC Price Cap Order*, 5 FCC Rcd at 6803.

[63] *See* US West Comments at 5-6 (*citing Bowen v. Georgetown University Hospital*, 488 U.S. 204 (1988) (*Bowen*)); *see also* BellSouth Comments at 3-9; Pacific Comments at 4; AT&T Comments at 3; GTE Reply Comments at 9-10; Bell Atlantic Reply Comments at 2; SWBT Comments at 1. Also, BellSouth asserts that because FCC Form 492 contains a line-item for an add-back adjustment and FCC Form 492A (the rate-of-return monitoring report filed by LECs subject to price cap regulation) does not, it is "clear" that an add-back adjustment would require changes to the LEC price cap rules and FCC Form 492A. BellSouth Comments at 6.

review.[64] They add that the add-back issue may become moot if the Commission eliminates the sharing and low-end adjustment mechanisms.

49. We agree with commenters that the explicit add-back rule adopted here may, as a legal matter, be applied only on a prospective basis.[65] Accordingly, this rule will first be applied when carriers file their 1995 access tariffs. At that point, carriers must make an adjustment to offset any sharing or low-end adjustments made for 1994 rates to determine any 1995 required sharing or permitted low-end adjustments.

50. Because add-back adjustments are necessary to achieve fully the purpose of the sharing and low-end adjustment mechanisms, we believe that adoption of this explicit rule -- even if we were to assume that the add-back adjustment is not already required under existing rules -- does not constitute a major change to the LEC price cap rules. Without this adjustment, the sharing and low-end adjustments would not operate as one-time adjustments to a single year's rates as we intended.[66]

B. Credit for Below-cap Pricing

1. NPRM Discussion of Credit for Below-cap Pricing

51. The *NPRM* solicited comment on whether a LEC that sets its rates below the price cap indexes during the base year[67] should receive credit for the difference between its PCI and its API when it computes sharing and low-end adjustments in the following year.[68] We also requested comment on how such a credit would operate.[69] Although we reached no tentative conclusions regarding the credit issue, we stated that "in a sense, the LEC already has passed through some rate reductions by pricing below the cap [, and that a]llowing credit for below-cap rates would encourage carriers to charge lower, below-cap rates."[70] We noted, however, that if the LEC's low earnings in one year result in part from its own decision to set rates below the cap, the rationale for allowing an upward adjustment in the cap the next year seemed less compelling.[71] We noted that the 4.3 percent productivity factor already enabled LECs to trade larger up-front rate cuts for reduced sharing requirements.[72] We pointed out that the Commission explicitly declined to adopt a plan that would have automatically reduced sharing based upon the actual rates set by the LEC.[73]

2. Comments on Credit for Below-cap Pricing

52. BellSouth and Ameritech maintain that a credit for below-cap rates is appropriate because the LEC already has passed through some rate reduction by pricing below the cap, and a credit would encourage carriers to charge lower rates on a voluntary basis.[74] BellSouth and Bell Atlantic also contend that adoption of a credit would "ameliorate, to some extent, the damage done to the price cap incentive structure by the addition of an add-back' requirement" and would provide a positive incentive for LECs to propose lower rates.[75] US West, Bell Atlantic, and Ameritech argue that because add-back adjustments perversely affect LECs choosing to price below their caps, the Commission should "limit the add-back [adjustment]' to the amount that prices were actually changed as a result of a sharing or low-end adjustment."[76] As BellSouth envisions the proposed credit, carriers would calculate the amount by which they priced below the revenue cap in the base period and deduct that amount from the earned return calculated on the Form 492A to determine the subsequent year sharing obligation.[77]

53. NYNEX, AT&T, GTE, and MCI assert that a credit mechanism would add administrative complexity to and is inconsistent with the LEC price cap plan.[78] NYNEX and AT&T argue that a credit is unnecessary because a LEC with below-cap rates already receives a credit in the form of a smaller sharing obligation.[79] MCI claims that the below-cap credit would "allow price cap LECs to avoid sharing, in whole or in part, and thereby exceed the allowed rates of return under price cap regulation."[80]

3. Discussion of Credit for Below-cap Pricing

54. After reviewing the record in this proceeding, we find that awarding LECs a credit for setting rates below the cap during the base year period would be inconsistent with the LEC price cap plan as originally adopted. In the *LEC Price Cap Order*, the Commission decided to limit the LECs' choice of productivity offsets to either 3.3 or 4.3

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[64] *See* BellSouth Comments at 2, 3; Bell Atlantic Comments at 4, 5; GTE Comments at 14, 15; USTA Comments at 4; RTC Comments at 4; Pacific Comments at 4; and SWBT Comments at 1-2 (*citing LEC Price Cap Order*, 5 FCC Rcd at 6834 ("To provide a fair evaluation of the [LEC price cap] program, it is. . . important that the initial period before periodic review and the possibility of major adjustments be long enough for incentives to operate. We believe that a four-year period without major adjustment . . . is reasonable.")). *See also* Price Cap Performance Review for Local Exchange Carriers, 9 FCC Rcd 1687 (1994).

[65] *See Bowen*, 48 U.S. 204.

[66] While Form 492A does not contain a line to record add-back adjustments as part of the calculation of the following year's sharing and low-end adjustments, this is not dispositive of whether an add-back adjustment is required to achieve the intended effect of the LEC price cap rules. We direct the Bureau to make any changes to Form 492A necessary to ensure that Form 492A clearly indicates that the LECs must remove the effects of sharing and low-end adjustments for a given year before they calculate sharing and low-end adjustments for the following year.

[67] The base year is "[t]he 12-month period ending six months prior to the effective date of annual price cap tariffs." *See* Section 61.3(e) of the Commission's Rules, 47 C.F.R. § 61.3(e).

[68] *NPRM*, 8 FCC Rcd at 4417.

[69] *Id.*

[70] *Id.*

[71] *Id.*

[72] *Id.*

[73] *LEC Price Cap Order*, 5 FCC Rcd at 6803.

[74] *See* BellSouth Comments at 10; *see also* Ameritech Comments at 7.

[75] BellSouth Reply Comments at 14; BellSouth Comments at 10; Bell Atlantic Comments at 7.

[76] US West Comments at 8-9; *see also* Ameritech Comments at 7; Bell Atlantic Comments at 7.

[77] BellSouth Comments at 10.

[78] *See* NYNEX Comments at 3, 13; *see also* AT&T Reply Comments at 6-7; AT&T Comments at 4 n.6; GTE Comments at 5, 6; MCI Reply Comments at 11-12.

[79] NYNEX Comments at 3; AT&T Reply Comments at 7.

[80] MCI Reply Comments at 11.

percent. The Commission concluded that permitting the LECs to choose between these two productivity offsets gave these carriers sufficient flexibility, was relatively easy to administer and monitor, and struck a reasonable balance of interests, risks, and rewards between LECs and their customers.[81] We considered and rejected a United proposal to permit the LECs choosing to set rates at any level below the PCI in one year to have a corresponding upward adjustment to the earnings benchmarks that trigger sharing obligations. We find that awarding LECs a credit for below-cap rates is substantially similar to the rejected United proposal.

55. Allowing a LEC that has set its rates below the price cap indexes during the base year to receive credit for the amount its PCI exceeds its API in calculating sharing and low-end adjustment amounts would effectively offer the LECs productivity offset choices other than those specifically adopted by the Commission in the *LEC Price Cap Order*. A credit, in effect, would allow the LECs to set rates at any level below the PCI in one year and obtain a corresponding increase in the "no sharing" and "sharing zones" for purposes of calculating the next year's sharing and low-end adjustments. We, therefore, find that allowing LECs a credit for setting rates below the cap during the base year period would constitute a change in the LEC price cap plan. Accordingly, we do not modify the LEC price cap rules to allow a credit for below-cap rates in this order.[82]

III. CONCLUDING MATTERS

A. Conclusion

56. In this order, we find that the add-back adjustment ensures that the sharing and low-end adjustment mechanisms operate as the Commission intended when it adopted the LEC price cap plan. We further find that the add-back adjustment is essential if the sharing and low-end adjustments of the LEC price cap plan are to achieve their intended purpose. Because the add-back requirement does not currently appear in our rules, we adopt the proposed revisions to the rules in order to make explicit the requirement that price cap LECs must exclude the effects of sharing and low-end adjustments relating to the prior year before computing the earnings levels that determine required sharing or permitted low-end adjustments for the current year. In addition, we direct the Common Carrier Bureau to revise Form 492A, to the extent necessary, to reflect the add-back requirement more clearly. Further, we decide not to allow a credit for below-cap rates.

B. Regulatory Flexibility Act Analysis

57. In the *NPRM*, we certified that the proposed rule amendment would not have a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act.[83] Neither the Chief Counsel for Advocacy of the Small Business Administration nor any commenting party disagreed with our analysis. The Secretary shall send a copy of this Report and Order, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 605(b) of the Regulatory Flexibility Act, Pub. L. No. 69-354, 94 Stat. 1164, 5 U.S.C. §§ 601 *et seq.* (1981).

C. Ordering Clauses

58. Accordingly, IT IS ORDERED that pursuant to authority contained in Sections 1, 4(i) and (j), 201-205, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (j), 201-205, and 403, Part 61 of the Commission's Rules is AMENDED as set forth in Appendix B.

59. IT IS FURTHER ORDERED that the rule adopted herein SHALL BE EFFECTIVE upon 30 days after publication in the Federal Register.

60. IT IS FURTHER ORDERED that the Chief, Common Carrier Bureau is delegated the authority specified in this Order.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX A

List of Parties Filing Comments

American Telephone and Telegraph Company (AT&T)
Ameritech Operating Companies (Ameritech)
The Bell Atlantic telephone companies (Bell Atlantic)
BellSouth Telecommunications, Inc. (BellSouth)
GTE Service Corporation and its affiliated domestic telephone operating companies (GTE)
MCI Telecommunications Corporation (MCI)
New York Telephone Company and New England Telephone and Telegraph Company (NYNEX)
Pacific Bell and Nevada Bell (Pacific)
Rochester Telephone Corporation (RTC)
Southern New England Telephone Company (SNET)
Southwestern Bell Telephone Company (SWBT)
United States Telephone Association (USTA)
U S WEST Communications, Inc. (US West)

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[81] *LEC Price Cap Order*, 5 FCC Rcd at 6796, 6803, 6805.

[82] US West asserts in its comments in this proceeding that the Commission should eliminate the sharing and low-end adjustments "in their entirety." US West Comments at 5. BellSouth and US West also urge the Commission to eliminate the price cap rule requiring a permanent reduction in a LEC's PCI when it selects a 4.3 percent productivity factor. BellSouth Comments at 11-12; US West Reply Comments at 7. These issues are beyond the scope of this proceeding and are more properly addressed as part of the LEC price cap performance review. *See, generally, LEC Price Cap Performance Review NPRM*, 9 FCC Rcd at paras. 43-55. We therefore decline to address these issues in this docket.

[83] *NPRM*, 8 FCC Rcd at 4417.

List of Parties Filing Reply Comments

AT&T
Ameritech
Bell Atlantic
BellSouth
GTE
MCI
NYNEX
Pacific
US WEST

APPENDIX B

Part 61 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 61 -- TARIFFS

1. The authority citation continues to read as follows:

AUTHORITY: Secs. 1, 4(i), 4(j), 201-205, and 403 of the Communications Act of 1934, as amended; 47 U.S.C. 151, 154(i), 154(j), 201-205, and 403, unless otherwise noted.

2. Section 61.3(e) is amended to read as follow:

§ 61.3 Definitions.

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(e) *Base Period.* *** Base year or base period earnings shall not include amounts associated with exogenous adjustments to the PCI for the sharing or lower formula adjustment mechanisms.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: April 3, 1995

SOCIAL CONTRACT FOR CONTINENTAL CABLEVISION, INC. AVAILABLE FOR COMMENT

THE COMMISSION SEEKS COMMENT ON A PROPOSED SOCIAL CONTRACT WITH CONTINENTAL CABLEVISION THAT RESOLVES RATE CASES, ASSURES RATE STABILITY, AND PROVIDES INCREASED INVESTMENT IN CABLE TV INFRASTRUCTURE; REFUNDS OF UP TO APPROXIMATELY $9.5 MILLION TO BE PROVIDED TO AFFECTED SUBSCRIBERS

Continental Cablevision, Inc. ("Continental") and the Federal Communications Commission ("Commission") have negotiated a social contract. The Commission is considering the proposed Contract pursuant to its authority to regulate cable services under Title VI of the Communications Act and the Commission's February 22, 1994 decision that it would consider social contracts as an alternative form of regulation for cable operators. The proposed Contract will be considered for approval after evaluating public comment on the proposed agreement. This notice and the proposed Contract are being mailed to each person who has filed a rate complaint with respect to one of Continental's systems, and to all franchising authorities that have granted a cable franchise to Continental. This notice contains a summary description of the Contract. The terms of the proposed Contract will be controlling and interested persons should read the proposed Contract in its entirety. Copies of the proposed Contract can be obtained in the manner described below.

The proposed Contract is designed to (1) assure fair and reasonable rates for Continental's cable service customers; (2) improve Continental's cable service by substantially upgrading the channel capacity and technical reliability of its United States cable systems; and (3) reduce the administrative burden and costs of regulation for local governments, the Commission, and Continental.

The proposed six-year Contract covers both basic and cable programming service tiers in all of Continental's cable franchises, including those that are currently unregulated because no franchising authority has been certified to regulate basic rates, or because no complaint has been filed against the cable programming services tier. Franchise areas where the franchise authority has not certified to regulate rates contain approximately 1.8 million subscribers to Continental's basic service tiers and approximately 1.3 million subscribers to Continental's cable programming services tiers. Overall, Continental serves approximately 3 million subscribers.

Under the 1992 Cable Television Consumer Protection and Competition Act, a basic service tier is the tier of programming that contains local broadcast stations. Cable programming services tiers are all other cable services, except those sold on a per channel or per program basis.

Specifically, the proposed Contract provides for investment of at least $1.35 billion to rebuild and upgrade all of Continental's domestic cable systems from 1995-2000, including deployment of fiber optic technology, increased channel capacity and improved system reliability and picture quality.

The proposed Contract provides for the resolution and termination of Continental's 148 pending basic service and cable programming services cases where Continental had justified its rates using cost of service filings ("cost of service cases") and 229 pending cable programming services cases where it had used the Commission's benchmark formula to justify rates ("benchmark cases"). As part of the resolution of these cases, Continental will make in-kind refunds to affected customers totalling approximately $9.5 million and conform all of its basic service benchmark and cost of service rates to 15% below the Commission's benchmark formula as described below. In unregulated franchise areas, basic rates will be reduced 15% below the current rates.

- In settlement of Continental's cost of service cases:

  - Continental will provide each of its approximately 509,000 subscribers to basic service tiers with an in-kind refund with a minimum retail value of $5.00. These refunds will have a minimum aggregate retail value of approximately $2,545,000.

  - Continental will provide each of its approximately 818,000 subscribers to cable programming services tiers with an in-kind refund with a minimum retail value of $4.50. These refunds will have a minimum aggregate retail value of approximately $3,681,000.

- In settlement of Continental's benchmark cable programming services cases:

  - For pre-May 15, 1994 cable programming services benchmark cases Continental will provide each of the approximately 231,000 subscribers, who the Commission has determined qualify for a refund, with an in-kind refund having a minimum retail value of $2.00. These refunds will have a minimum aggregate retail value of $462,000.

  - For post-May 15, 1994 cable programming services benchmark cases currently pending before the Commission, Continental will provide each of the approximately 351,000 subscribers, who the Commission has determined qualify for a refund, with an in-kind refund having a minimum retail value of $8.00. These refunds will have a minimum aggregate retail value of approximately $2,808,000.

The resolution of pending rate cases is without any finding by the Commission of any wrongdoing by Continental.

Basic service tier benchmark cases currently pending before franchise authorities will be resolved by Continental and the franchise authority pursuant to Commission rules.

Franchise authorities will have the ability to opt out of the basic service tier cost of service refunds specified by the proposed Contract and to resolve with Continental any amounts owed to customers pursuant to Commission rules. To opt out of the proposed Contract provisions, franchise authorities must provide written notice to the Commission of its decision to do so no later than forty-five (45) days following the publication date of this notice.

Continental will forego its right to use cost of service justifications to support any future rate increases in any franchises covered by this proposed Contract during the period that the Contract remains in effect.

Continental will reduce its existing basic service tier rates in all franchises, creating a "lifeline basic" tier. To accomplish this, Continental will reduce its basic service tier rates for all regulated franchises, including franchises where benchmark and cost of service cases have been filed, to 15% below the Commission's benchmark rate formula. Continental will reduce its basic service tier rates for all unregulated franchises to 15% below their current rate levels. Continental will be permitted to offset each of the 15% reductions by increasing the rate for its cable programming services tier. After this conversion, which will be implemented no later than January 1, 1996, Continental will not add any additional programming to its lifeline basic tiers for the term of the proposed Contract, except as specifically required by franchise authorities or as required by law.

Cable programming services tier rates for franchises for which Continental justified its rates under cost of service principles will be set at current rates. By January 1, 1996, the cable programming services rates for all Continental franchises that established their rates pursuant to the Commission's benchmark formula will comply with the Commission's benchmark rules. Cable programming services tiers rates that are currently unregulated will be set at current levels. In each case, Continental will be permitted to adjust its cable programming services rates to offset the 15% reductions in its basic service tier and to allow for external cost increases, inflation and channel additions permitted by the Commission's *Going-Forward* rules. Under the *Going Forward* rules, Continental is permitted, subject to limits prescribed in those rules, to add new services and to reflect the cost of those new services by an amount not to exceed $.20 per added channel, plus the actual license fees for the added channels. Continental will be permitted to conduct a second round of channel additions from 1998-2000 under the same terms.

Continental will be permitted to average broad categories of equipment and various installation costs for all its systems on a state-wide or region-wide basis.

Continental will be permitted on each system to move not more than four existing services on cable programming services tier(s) to a single Migrated Product Tier, provided the Migrated Product Tier is offered without requiring customers to purchase any tier other than the basic service tier. The rates of the Migrated Product Tier will be regulated in accordance with price limits contained in the proposed Contract until January 1, 1997, at which point Continental systems may elect to convert their Migrated Product Tiers into New Product Tiers, as defined by the *Going Forward* rules, provided that the tier continues to be offered without requiring customers to purchase any tier other than the basic service tier. The rates for the New Product Tiers are regulated by market forces.

The Commission will treat this proceeding as a non-restricted proceeding. 47 C.F.R. §§ 1.1206, 1.1200(a). Parties wishing to comment on the proposed Contract should do so by filing with the Secretary no later than May 3, 1995 an original and four copies of their comments. Replies may be filed no later than May 18, 1995. All such pleadings should reference the file number noted above. All comments will be available to any of the parties upon request.

Franchise authorities that wish to opt out of the basic service tier cost of service refunds specified by the Contract, must provide written notice to the Commission of its decision to do so by May 18, 1995. All such notifications should reference the file number noted above.

The contract is available for reference in the Cable Services Bureau's public reference room, Room 333 at 2033 M Street, N.W., Washington, D.C. Copies are available from the Commission's copy contractor, International Transcription Services, at Room 246, 1919 M Street, N.W., Washington, D.C., 20554, telephone number (202) 857-1433. The contract is also available via Internet at ftp @ fcc. gov. For further information, contact JoAnn Lucanik, Jerome Fowlkes or Lenworth Smith, Jr. (202) 416-0800.

Media contacts: Audrey Spivack (202) 418-0500 and Morgan Broman (202) 416-0852.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Review of the Commission's Regulations Governing Attribution of Broadcast Interests	**MM Docket No. 94-150**
Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry	**MM Docket No. 92-51**
Reexamination of the Commission's Cross-Interest Policy	**MM Docket No. 87-154**

ORDER

Adopted: April 3, 1995; Released: April 7, 1995

By the Commission:

1. By this Order, we deny the Motion to Establish an Accelerated Procedural Schedule for the LLC Issue ("Motion"), which the Association of Black Owned Television Stations ("ABOTS") filed in the above-captioned proceeding on January 25, 1995. We leave in place the current filing deadlines in the above-captioned proceeding: April 17, 1995 for comments and May 17, 1995 for reply comments.[1]

2. In its Motion, ABOTS urges us to accelerate the comment schedule with respect to Section VII (Limited Liability Companies and Other New Business Forms) of the *Notice of Proposed Rule Making* (*"Notice")* in the above-captioned proceeding,[2] with comments due by February 10, 1995, and reply comments due by February 17, 1995. ABOTS also asks us to accelerate our disposition in the rule making with respect to the issue of Limited Liability Companies ("LLCs"), and to reach a decision by March 3, if possible. ABOTS argues that LLCs should be encouraged, at least to the extent that they provide a vehicle for greater minority ownership in broadcasting. ABOTS notes that minorities face difficulties in attracting and retaining financing and expresses its concern that delay in resolution of the instant rule making could leave in doubt the form of the Commission's ultimate rules for LLCs and "diminish the willingness of nonminorities to invest in minority controlled ventures." ABOTS also argues that a resolution of the LLC issue is not inextricably tied to any of the other issues in the *Notice* or in the companion Notices of Proposed Rule Making with respect to minority ownership and television station ownership that we issued concurrently.[3]

3. We do not believe that grant of ABOTS' Motion is warranted. In the *Notice*, we specifically delineated our interim attribution policy with respect to LLCs so as to avoid delaying processing of pending applications. As we stated, "[s]o that we do not indefinitely delay processing of pending applications, we plan to process them on a case-by-case basis until this rule making is completed, using the tentative proposal delineated in paragraph 69 *infra* [of the *Notice*] as our interim policy, including the special exception for minorities discussed therein." *Notice*, ¶ 64. In paragraph 69 of the *Notice*, we explained our tentative proposal to treat LLCs as we now treat limited partnerships under our attribution rules. We also discussed applying a case-by-case exception to the tentative proposal to enhance opportunities for broadcast station ownership by minorities. That tentative proposal, as delineated in paragraph 69 of the *Notice*, is our interim processing policy with respect to LLCs. In light of this explanation, which ABOTS does not discuss in its Motion, we believe that the concerns expressed by ABOTS in its Motion are unfounded.

4. Further, accelerating the comment deadlines with respect to LLCs would not serve the public interest. As ABOTS notes, under 47 C.F.R. § 1.415(b) and (c), a reasonable time will be provided for the filing of comments and reply comments. Given the comprehensiveness and complexity of the issues in the *Notice*, including the novelty and complexity of the LLC issue, and the extensive requests for data made in the *Notice*, we believe that shortening the filing deadlines as requested by ABOTS would be unreasonable and would not promote reasoned decisionmaking. Moreover, contrary to the arguments made by ABOTS, we believe that our approach with respect to LLCs should not be severed from our approach to other issues raised in the *Notice*. Indeed, in paragraphs 71, 73 and 74 of the *Notice*, we invited comment as to how certain possible approaches to other attribution issues raised in the Notice should affect our treatment of LLCs. Severing the issue of LLCs from the rest of the issues raised in the *Notice* would foreclose our consideration of these issues. We decline to limit the range of our decisionmaking by deciding one very significant issue before resolving all the general and specific issues raised in the *Notice*. Nor should resolution of this very significant attribution issue be separated from our consideration of the minority ownership and television station multiple ownership rule makings. We intentionally set parallel comment filing deadlines in the three companion rulemaking proceedings adopted December 15, 1994,[4] so that we could review the comments in the three proceedings concurrently "to assure a coordinated approach to the three proceedings." *Notice*, ¶ 11.

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[1] We are in receipt of motions to extend the comment filing deadlines in the instant proceeding and in the other two companion proceedings referenced in footnote 3, *infra*. Those motions are under consideration and will be acted on in a separate order.

[2] FCC 94-324 (released Jan. 12, 1995).

[3] *Notice of Proposed Rule Making* in MM Docket Nos. 94-149 and 91-140, FCC 94-323 (released Jan. 12, 1995) (minority ownership); *Further Notice of Proposed Rule Making* in MM Docket No. 91-221, FCC 94-322 (released Jan. 17, 1995) (television station ownership).

[4] The three proceedings include the instant proceeding, as well as the minority ownership proceeding and the television station ownership proceeding, which are referenced in footnote 3, *supra*.

ABOTS fails to convince us that our interim policy is insufficient nor that our initial decision to consider related issues together is contrary to the public interest.

5. Accordingly, pursuant to Section 4(j) of the Communications Act, 47 U.S.C. § 154(j), IT IS HEREBY ORDERED that the Motion to Establish an Accelerated Procedural Schedule for the LLC Issue filed by the Association of Black Owned Television Stations is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 95-39

In re

Review of the Syndication and
Financial Interest Rules, Sections
73.659 - 73.663 of the Commission's Rules

NOTICE OF PROPOSED RULE MAKING

Adopted: April 5, 1995; **Released: April 5, 1995**

Comment Date: May 30, 1995
Reply Comment Date: June 14, 1995

By the Commission:

I. INTRODUCTION

1. In 1993, after an extensive rulemaking proceeding, the Commission substantially relaxed its financial interest and syndication ("fin/syn") rules and established a timetable for their complete expiration.[1] Under that timetable, the rules presently are scheduled to expire in November 1995. As contemplated by our 1993 decision, we initiate this proceeding to provide an opportunity for comment before the remaining fin/syn restrictions expire, with the burden of proof placed on those parties seeking continued restrictions. We also seek comment on whether to amend the timetable we established in 1993 so as to accelerate the expiration date for the remaining fin/syn rules in the event parties arguing for their continuation fail to carry their burden of proof.

II. BACKGROUND

2. The fin/syn rules, originally adopted in 1970, placed significant restrictions on the ability of the established networks (ABC, CBS, and NBC) to own television programming and engage in the practice of syndication. The Commission imposed these constraints to limit network control over television programming and thereby encourage the development of a diversity of programs through diverse and antagonistic sources of program services.[2]

3. Recognizing the increased competition facing the networks, the Commission initiated a rulemaking proceeding in 1990 to assess the continuing efficacy of the fin/syn rules.[3] After receiving extensive comment and conducting an *en banc* hearing, the Commission in 1991 relaxed certain aspects of the rules but retained a modified fin/syn regime.[4] On appeal, however, this decision was overturned by the United States Court of Appeals for the Seventh Circuit ("Seventh Circuit") for failing to explain adequately how the revised rules satisfied the Commission's diversity goals, or why the Commission had rejected certain arguments advanced by the networks during the course of the proceeding.[5]

4. In response to the Seventh Circuit's decision, and after an additional opportunity for comment, the Commission in its *Second Report and Order* in MM Docket No. 90-162 (*"Second R&O"*) further relaxed the fin/syn rules and established a timetable for their complete expiration.[6] The Commission found that repeal of the fin/syn rules was warranted given the increased competition facing the networks and the conditions in the television programming marketplace.[7] We eliminated certain aspects of the fin/syn rules immediately, but took a more cautious approach with respect to others to allow us to observe network conduct under the relaxed rules before the rules completely expired and to allow parties time to adjust to the new, deregulated business environment. We consequently retained a number of fin/syn restrictions, but scheduled their complete expiration for the date two years after the entry of a court order removing provisions from antitrust consent decrees that imposed prohibitions on ABC, CBS, and NBC which were similar to the restrictions imposed by the Commission's 1970 fin/syn rules.[8] On November 10, 1993, in response to a joint motion filed by the three networks, the United States District Court for the Central District of California

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[1] *Second Report and Order* in MM Docket No. 90-162, 8 FCC Rcd 3282, *recon. granted in part, Memorandum Opinion and Order* in MM Docket No. 90-162, 8 FCC Rcd 8270 (1993), *aff'd sub nom. Capital Cities/ABC, Inc. v. FCC*, 29 F.3d 309 (7th Cir. 1994).

[2] *See Network Television Broadcasting*, 23 FCC 2d 382, 400 (1970), *aff'd sub nom. Mt. Mansfield Television v. FCC*, 442 F.2d 470 (2d Cir. 1971).

[3] *Notice of Proposed Rule Making* in MM Docket No. 90-162, 5 FCC Rcd 1815 (1990). In 1983, the Commission had tentatively concluded that it should repeal the financial interest rules and retain modified syndication restrictions, and to sunset any remaining constraints by 1990. *Tentative Decision and Request for Further Comments* in BC Docket No. 82-345, 94 FCC 2d 1019 (1983). Seven years later, this docket was terminated with no further action being taken on the Commission's tentative conclusions; instead, a new proceeding -- MM Docket No. 90-162 -- was commenced to examine whether the fin/syn rules continued to be necessary.

[4] *Report and Order* in MM Docket No. 90-162, 6 FCC Rcd 3094, *as modified, Memorandum Opinion and Order*, 7 FCC Rcd 345 (1991).

[5] *Schurz Communications, Inc. v. FCC*, 982 F.2d 1043 (7th Cir. 1992).

[6] The Commission's *Second R&O*, 8 FCC Rcd 3282 (1993), modified in a few minor respects on reconsideration, *Memorandum Opinion and Order* in MM Docket No. 90-162, 8 FCC Rcd 8270 (1993) (*"MO&O"*), was upheld on appeal by the Seventh Circuit. *Capital Cities/ABC, Inc. v. FCC*, 29 F.3d 309 (7th Cir. 1994).

[7] These conditions included the decline in network audience share since the fin/syn rules were adopted, the increasing demand for television programming created by the emergence of the Fox network and cable networks and the growth of independent television stations, the intense competition among the three established networks for programming, the increasing ability of first-run distribution to be a fully comparable alternative to network distribution, and the increased concentration in the programming production industry. *See Second R&O*, 8 FCC Rcd at 3303-10.

[8] *See* 47 C.F.R. § 73.663 and *Second R&O*, 8 FCC Rcd 3282, *recon. granted in part, MO&O*, 8 FCC Rcd 8270. Under these consent decrees, ABC, CBS, and NBC were prohibited from

entered an order lifting these prohibitions.[9] Thus, the remaining fin/syn rules are scheduled to expire on November 10, 1995. The Commission also determined in the *Second R&O* that, prior to the scheduled expiration of the rules, it would conduct a review of network activities in the financial interest and syndication areas, and initiate this review no later than 18 months after the lifting of the consent decree prohibitions, *i.e.*, no later than May 10, 1995.[10]

5. As noted, the *Second R&O* continued a number of constraints until the scheduled expiration of the rules. More specifically, during this interim period the networks are prohibited from actively syndicating prime time entertainment network programming or first-run non-network programs to television stations within the United States. Any such program for which a network holds a passive syndication right must be syndicated domestically through an independent syndicator.[11] Moreover, the Commission retained the prohibition against a network holding or acquiring a continuing financial interest or syndication right in any first-run, non-network program distributed in the United States unless the network has solely produced that program. The Commission also imposed during this interim period reporting requirements on the networks,[12] as well as anti-warehousing safeguards designed to prevent a network from withholding prime time programs from the syndication market.[13]

6. While retaining for an interim period the above restrictions, the *Second R&O* eliminated other aspects of the fin/syn rules immediately. It eliminated restrictions on network acquisition of financial interests and passive syndication rights in network programming, except for certain reporting requirements, and all other ownership and syndication restrictions on non-prime time network programming. The *Second R&O* also eliminated restrictions on network ownership and syndication of all non-entertainment network programming (whether prime time or not), and it placed no limits on the amount of "in-house" programming a network can produce and distribute through its network distribution system.[14] The Commission also exempted emerging networks from all fin/syn constraints, except for reporting requirements that are triggered once the emerging network provides 16 hours of prime time programming per week to interconnected affiliates.[15]

7. With respect to foreign markets, the Commission ruled that networks may purchase, without restriction, foreign syndication rights in off-network programming distributed outside of the United States and first-run programming distributed solely outside the United States. Under these same conditions, the networks may engage in active syndication abroad. The networks may purchase foreign syndication rights in, including active syndication of, first-run programming in foreign markets even if the programs are also distributed domestically if the network is the sole producer of the programming.

III. REVIEW PRIOR TO EXPIRATION OF RULES

8. As provided by the Commission's rules, we are issuing this *Notice* to afford an opportunity for opponents of fin/syn repeal to demonstrate that retention of restrictions is warranted,[16] with the burden of proof on those who would retain the restrictions. The remaining rules will expire on November 10, 1995, unless we take affirmative action to the contrary.[17]

9. The bases for the scheduled elimination of all the fin/syn rules are set forth in the *Second R&O*, which concluded that the market conditions present at that time did not justify continuation of the fin/syn regime.[18] Indeed, on review of the *Second R&O*, the Seventh Circuit stated that it would not have "forbidden an immediate rescission of restrictions whose mismatch with the current situation in the broadcast industry becomes more evident by the day."[19]

10. Out of an abundance of caution, however, the Commission took a phased approach toward deregulating in this area due to several non-market factors. First, our assessment that the networks would not act in ways detrimental to diversity and competition was necessarily predictive in nature, and, as the Seventh Circuit stated, a phased deregulatory scheme would allow us to "observe the operation of a partially deregulated market before allowing

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acquiring financial interests or proprietary (distribution) rights in non-network uses of television programs by others, from engaging in the domestic syndication business, and from conditioning or tying the purchase of the network right to a program upon the supplier's grant of any other right or interest to the network. *Second R&O*, 8 FCC Rcd at 3339.

[9] *United States v. National Broadcasting Company*, 842 F. Supp. 402 (C.D. Cal. 1993).

[10] 47 C.F.R. § 73.663. *See also Second R&O*, 8 FCC Rcd at 3337-42.

[11] Syndication is the industry term used to refer to the licensing of programs for exhibition to individual stations. We use the term "active" syndication to refer to the direct negotiation with individual stations for the exhibition of programs, and the term "passive" syndication to refer to the holding of syndication rights that do not bestow the right to negotiate directly with individual stations.

[12] Under these requirements, the networks must file semi-annual reports identifying all network prime time entertainment programs and first-run non-network programs in which they hold or acquire financial interests or syndication rights. In addition, the networks must provide various related information, such as details concerning the independent syndicators that market such programming, and lists of the domestic stations to which the networks themselves syndicate. These reports must be filed with the Commission and placed in the public file of each network owned and operated station before the first regular business day of September and March of each year. *See* 47 C.F.R. § 73.661.

[13] Under these safeguards, a network is required to release into syndication a program for which it held syndication rights four years after the program's debut or within 180 days following the end of the network run, whichever is sooner. 47 C.F.R. § 73.660(b).

[14] "In house" productions refer to co-production arrangements between a network and an outside domestic or foreign producer, as well as programming produced solely by a network.

[15] An "emerging network" is defined as an entity not meeting the definition of a "television network" as of June 5, 1993, but which subsequently meets this definition. 47 C.F.R. § 73.662(g). *See also* 47 C.F.R. § 73.662(f) (in general, defining "television network" as any entity providing on a regular basis more than fifteen hours of prime time programming per week to interconnected affiliates that reach, in aggregate, at least 75 percent of television households nationwide).

[16] 47 C.F.R. § 73.663. *See Second R&O*, 8 FCC Rcd at 3337-42.

[17] *Id.*

[18] *See Second R&O*, 8 FCC Rcd at 3303-08, 3337-40; *see also MO&O*, 8 FCC Rcd at 8279-80.

[19] *Capital Cities/ABC, Inc.*, 29 F.3d at 316.

deregulation to become complete."[20] Second, a more cautious approach appeared to be warranted with respect to active syndication because of the more significant risk of damage to outlet diversity in the event that we prematurely removed these last restrictions. Third, we recognized that immediate elimination of all the rules could be disruptive and have unintended and unforeseen negative effects, given the fact that the fin/syn regulatory scheme has been in place for over two decades; we judged that a phased elimination of the rules would minimize the disruption of the television industry's business practices.[21]

11. Given these factors, we staggered elimination of the rules, retaining for an interim period constraints on active network syndication and substantial involvement in the first-run market as well as the anti-warehousing safeguards. We also scheduled the review we initiate today as "an additional safeguard to gauge as responsibly as possible whether our conclusion regarding the state of the 1993 market -- that it can operate effectively without fin/syn restrictions -- and of developing market trends was accurate."[22]

12. By this *Notice,* we are providing an opportunity for comment on the accuracy of our 1993 predictions and our conclusion that the remaining fin/syn restrictions should be eliminated. Comments submitted by parties who oppose the scheduled expiration of these restrictions will need to convince us that, based on the current status of the program production and distribution markets and the activities of the networks since 1993, the Commission should continue regulation in this area. Parties arguing for retention of fin/syn restrictions should support their positions with empirical data and economic analysis. In this regard, we list the following factors that the *Second R&O* set forth as being relevant to the review we initiate today:[23]

- The extent to which a network-owned program is syndicated primarily to that network's affiliates.
- Patterns that reveal delay in the introduction of network programs (in which the networks had financial interests or syndication rights) into the syndication market.
- The percentage of network programming in which a network has obtained a financial interest or syndication right.
- The relative change in the number of independent producers creating and selling television shows to the networks.
- Each network's share of the first-run syndicated programming domestic market.
- Concentration of ownership in the program production industry.
- Audience shares of first-run syndicated programming carried by non-network affiliated stations during prime time.
- The overall business practices of emerging networks, such as Fox, in the network television and syndication business.
- Network negotiating patterns, particularly the manner in which networks obtain financial interests and syndication rights and the extent to which successful negotiations over back-end rights influence network buying decisions.
- Network syndication practices, to the extent they are permitted.
- The relationship and business arrangements between networks and third-party syndicators of off-network programming.
- Mergers or acquisitions involving networks, studios, cable systems and other program providers since our 1993 fin/syn decision took effect.
- The growth of additional networks, including the development of Fox and its position vis-a-vis the major three networks.
- The growth in the number and types of alternative outlets for sale of programming (*e.g.*, the development of the Direct Broadcast Satellite service; cable penetration; wireless cable development).

In addition to examining information submitted regarding the above factors, we will also take notice of the record developed in our pending proceeding to review the Prime Time Access Rule ("PTAR") to the extent it is relevant here.[24]

13. The burden in this proceeding will be on fin/syn proponents to demonstrate "an excellent, a compelling reason" why the restrictions should be continued.[25] As we have stated previously,

> [b]ased on the evidence available to us [in 1993], we are prepared to presume that complete removal of all remaining restrictions will be appropriate, and we are therefore placing the burden of proof on those that urge retaining fin/syn restrictions. If proponents of retaining the rules fail to demonstrate to the Commission that the rules should be left in place, or if the Commission fails to act within six months after the final review begins, then the rules shall automatically expire.[26]

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[20] *Id.*

[21] *See MO&O*, 8 FCC Rcd at 8279. As the Seventh Circuit observed, the interim period has given "the independent producers an opportunity to form their own networks if they want to have distribution systems that are wholly independent of the existing networks, their competitors, which with the expiration of the remaining restrictions will no longer be handicapped in competing with the independent producers." *Capital Cities/ABC, Inc.*, 29 F.3d at 314. We note that two new networks have in fact recently been launched: the Warner Brothers Network ("WB"), owned by Warner Brothers, and the United Paramount Network ("UPN"), owned by Viacom-Paramount and Chris Craft/United. *See* David Tobenkin, "New Players Get Ready to Roll," *Broadcasting & Cable*, Jan. 2, 1995, at 30.

[22] *MO&O*, 8 FCC Rcd at 8279.

[23] *Second R&O*, 8 FCC Rcd at 3340-41.

[24] *Notice of Proposed Rule Making* in MM Docket No. 94-123, 9 FCC Rcd 6328 (1994).

[25] *Capital Cities/ABC, Inc.*, 29 F.3d at 316.E

[26] *Second R&O*, 8 FCC Rcd at 3340 (codified in 47 C.F.R. § 73.663). *See also MO&O*, 8 FCC Rcd at 8281 n.30 ("We intend

In affirming the Commission's phased approach to fin/syn repeal, the Seventh Circuit supported our presumption that the rules should expire, observing that the "three original networks are even weaker today than they were in March of [1993] when the decision to deregulate was made, and no doubt they will be weaker still [in 1995] when the new proceeding is to commence."[27]

IV. ACCELERATING THE RULES' EXPIRATION DATE

14. As described above, under the timetable set forth in our rules the remaining fin/syn restrictions will expire on November 10, 1995 unless parties opposing their expiration persuade us that the restrictions should be continued beyond this date. We seek comment on whether, in the event these parties fail to carry this burden of persuasion, we should amend our rules to allow for an earlier expiration date. We will have received comment from interested parties as part of our final review of the rules, and will have had over eighteen months to observe the networks' business practices under our interim fin/syn regime after the consent decrees imposed on the networks were modified. Assuming the commenters fail to persuade us that continued fin/syn restrictions are necessary, we question whether it would serve any public interest purpose to require the networks to wait until November 10, 1995 before they are set free from the remaining restrictions.[28] We consequently seek comment on accelerating the expiration date of the rules in the event parties arguing for their continuation do not carry their burden of proof, and whether doing so would unduly disrupt any business arrangements or practices that have been established in reliance on the presently scheduled expiration date of November 10, 1995.[29]

V. CONCLUSION

15. With this proceeding we initiate a final review of the fin/syn rules as part of the timetable we previously established for their elimination, and we also seek comment on whether to modify our rules so as to accelerate the scheduled expiration date of the rules in the event parties arguing for their continuation fail to carry their burden of proof. As in our previous fin/syn proceedings, our concern is not "the distribution of profits among private parties," but whether fin/syn restrictions are necessary to promote competition and diversity in television programming, program origination, and program delivery.[30] We will continue to be guided by these concerns in assessing arguments for continuing fin/syn restrictions.

VI. ADMINISTRATIVE MATTERS

16. *Ex Parte Rules -- Non-Restricted Proceeding.* This is a non-restricted notice and comment rulemaking proceeding. Accordingly, *ex parte* presentations will be permitted, except during the Sunshine Agenda period, provided they are disclosed as set forth in the Commission's Rules. *See* 47 C.F.R. §§ 1.1202, 1.1203, 1.1206(a).

17. *Comment Information.* Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before May 30, 1995, and reply comments on or before June 14, 1995. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, parties must file an original and four copies of all comments, reply comments and supporting comments. If parties want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

18. *Initial Regulatory Flexibility Analysis.* As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") -- set forth in Appendix A attached hereto -- of the expected impact on small entities of the proposal suggested in the *Notice*. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice*, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of this *Notice*, including the IRFA, to the Chief Counsel for Advocacy of Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.*

19. *Legal Authority.* Authority for this *Notice of Proposed Rule Making* is contained in Sections 4(i) and (j), and 301, 303(i), 303(r), 313 and 314 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 301, 303(i), 303(r), 313 and 314.

20. *Additional Information.* For additional information on this proceeding, contact Charles W. Logan (202/776-1653), Mass Media Bureau.

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to treat and address pleadings submitted by [proponents of the continuation of the fin/syn rules] similarly to a petition for rule making.").

[27] *Capital Cities/ABC, Inc.*, 29 F.3d at 316.

[28] Indeed, we note that the Seventh Circuit observed: "[t]he television industry is changing so rapidly that we cannot exclude the possibility that the interim restrictions will come to seem irrational before they are due to expire. In that event, however, the parties would be free to ask the Commission to modify or abrogate the restrictions ahead of schedule." *Capital Cities/ABC, Inc.*, 29 F.3d at 316.

[29] Until and unless we act on this acceleration proposal, our present timetable for the expiration of the fin/syn rules will remain in effect. Under that timetable, "[u]nless the Commission takes affirmative action to the contrary," the remaining fin/syn rules will expire on November 10, 1995. *See* 47 C.F.R. § 73.663.

[30] *Second R&O*, 8 FCC Rcd at 3302.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 95-40

In the Matter of

Amendment of Part 73 of the
Commission's Rules concerning the
Filing of Television Network
Affiliation Contracts

NOTICE OF PROPOSED RULE MAKING

Adopted: April 5, 1995; Released: April 5, 1995

Comment Date: June 12, 1995
Reply Comment Date: July 12, 1995

By the Commission:

I. INTRODUCTION

1. With this *Notice of Proposed Rule Making* (*NPRM*), the Commission continues its examination of rules regulating broadcast television network/affiliate relations in light of changes in the video marketplace. In our recent *Report and Order* in MM Docket No. 91-221, FCC 95-97 (adopted and released March 7, 1995), we eliminated 47 C.F.R. §73.658(f) (the network station ownership rule) and 47 C.F.R. §73.658(l) (the secondary affiliation rule). This *NPRM* proposes repeal or modification of 47 C.F.R. §73.3613(a) (the "filing of affiliation contracts" rule).[1] This rule requires television broadcast licensees to file copies of network affiliation contracts, agreements, and understandings with the Commission. The contract must be reduced to one written document, including the substance of any oral agreements, without reference to any other document. However, the rule does allow subsequent renewals, changes, or amendments to the contract to be set forth in separate filings that refer to the original contract. Notification of cancellation or termination of the filed contracts is also required. This rule applies only to agreements with broadcast television networks that offer 15 or more hours of programming per week to 25 or more affiliates in 10 or more states. Thus, while ABC, CBS, NBC, and Fox are subject to the rule, the United Paramount Network and the Warner Brothers Network are not.

II. BACKGROUND

2. The Commission used specific contractual terms contained in network affiliation agreements as the basis for the first broadcast radio network rules, set forth in the 1941 *Report on Chain Broadcasting*.[2] Key to the Commission's analysis were both the actual manner in which these terms were being used against the public interest,[3] and, in instances where the term had not been so abused, the hypothetical effects of such use in the future.[4] In adopting these rules, the Commission also for the first time determined that it had jurisdiction to regulate network/affiliate contractual relationships.[5] The affiliation agreements were generally not made available for public inspection.[6] The Commission subsequently applied the network radio rules to television in 1946.[7]

3. In 1955, the Commission initiated a general inquiry into television network broadcasting that culminated in the 1957 *Barrow Report*.[8] This report recommended that affiliation agreements be made available for public scrutiny. The *Barrow Report* argued that each affiliate should know the contents of all of its network's other affiliation agreements, just as the network does, thereby placing both into an equitable bargaining position. The intended result would be to make all of a network's affiliation compensation rates more similar, as the *Report* claimed that favored treatment of group station owners might discourage local

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[1] 47 C.F.R. § 73.3613 states that "[e]ach licensee or permittee of a commercial or noncommercial . . . TV . . . broadcast station shall file with the FCC copies of the following contracts, instruments, and documents together with amendments, supplements, and cancellations (with the substance of oral contracts reported in writing), within 30 days of execution thereof:

> (a) Network service: Network affiliation contracts between stations and networks will be reduced to writing and filed as follows:
>
> (1) All network affiliation contracts, agreements, or understandings between a TV broadcast or low power TV station and a national network. . .
>
> (2) Each such filing ... initially shall consist of a written instrument containing all of the terms and conditions of such contract, agreement or understanding without reference to any other paper or document by incorporation or otherwise. Subsequent filings may simply set forth renewal, amendment or change, as the case may be, of a particular contract previously filed in accordance herewith.
>
> (3) The FCC shall be notified of the cancellation or termination of network affiliations, contracts for which are required to be filed by this section."

[2] *Report on Chain Broadcasting*, Commission Order No. 37; Docket 5060 (May, 1941), *modified, Supplemental Report on Chain Broadcasting* (October, 1941), *appeal dismissed sub nom. NBC v. United States*, 47 F. Supp. 940 (1942), *aff'd*, 319 U.S. 190 (1943).

[3] *E.g., Id.* at 35-36, 51 (discussing the negative effects that exclusive affiliation agreements were having on the public interest).

[4] *E.g., Id.* at 74 (noting that no network had ever enforced its contractual right to set an affiliate's advertising rates).

[5] *Id.* at 80-87.

[6] *See Report and Order* in Docket No. 14710, 15 RR 2d 1579, n.1 (1969) (*Public Inspection of Affiliate Agreements*), citing *Order* in Docket No. 6572, August 2, 1945.

[7] *Rules Governing Television Broadcast Stations*, 11 Fed. Reg. 33, 37 (January 1, 1946).

[8] *Network Broadcasting*, Report of the Network Study Staff to the Network Study Committee (Oct. 1957), *reprinted in* Report of the House Committee on Interstate and Foreign Commerce, H.R. Rep. No. 1297, 85th Congress, 2nd Sess. (1958) (the *Barrow Report*).

ownership of television stations. Specifically, it found that networks were agreeing to better contract terms with group owners because of the opportunities they offered to increase the number of affiliated stations in other markets. It added that the varying rates often reflected agreements regarding the level of program clearance.[9] The *Barrow Report* concluded that, without guaranteed secrecy from both its competitors and the Commission, the networks would not likely pursue contract terms that violated the public interest. It therefore asserted that continued Commission monitoring, combined with mandated public disclosure of affiliation agreements, was required to prevent such practices as undue rate favoritism to group owners, exclusive affiliation agreements, network use of option time, and network control of the affiliate's advertising rates.[10] The Commission initiated a proceeding four years later, focusing on public inspection of affiliation agreements.[11] However, the *Barrow Report*'s recommendations were not acted upon, in part because a subsequently passed statute delayed the proceeding.

4. In 1967, Congress enacted the Freedom of Information Act (FOIA),[12] prompting the Commission to review its policies regarding the disclosure of various filings, including those of affiliation contracts. FOIA placed the burden of justifying nondisclosure on the government. In response to this statute, the Commission, continuing the proceeding initiated after the *Barrow Report*, sought additional comment on public inspection of affiliation agreements.[13] It analyzed whether network affiliation agreements were privileged and confidential, and thus statutorily exempt from the mandatory disclosure requirement. Almost all commenters in the proceeding, including networks and affiliates, opposed lifting the prohibition against public access. They stressed that dissemination of contract terms, especially those regarding rate compensation, would constitute a serious competitive injury. Commenters predicted that, with the publication of contract terms with affiliates in favored, more valuable markets, other affiliates would demand equal treatment. This, they claimed, would damage the networks' negotiating abilities.[14]

5. The Commission held that these claims were "exaggerated,"[15] noting that the higher value placed on affiliates in certain markets "w[ould] not ... come as a shock or even be news' to their competitors."[16] Further, according to the Commission, any likely costs of the new rule were outweighed by the public interest benefits of disclosure, because the public had a right to know the terms under which network service was provided. Disclosure, the Commission held, would also moderate the substantial variety in contract terms being negotiated throughout the country. It shared the concern of the *Barrow Report* that contract terms favoring group owners discouraged local ownership.[17] In its analysis, the Commission noted the conclusions of a Congressional subcommittee that, overall, network affiliation agreements seemed arbitrarily to favor multiple-station owners over smaller, independent entities,[18] and it cited the *Barrow Report's* similar finding.[19] Therefore, the Commission lifted the public access restriction in 1969 and made the filings publicly available at the Commission. Further, to facilitate inspection, all agreements had to be reduced to one document.[20]

6. In 1977, following a comprehensive review of its AM and FM radio network rules, the Commission made several rule changes. Although many of the radio network rules were abolished, the required filing of commercial network affiliation contracts was retained for those networks furnishing programming to affiliated stations at least five days per week during eight or more months per year, as stations with less network programming were unlikely to be unduly influenced by that network.[21] The Commission eliminated the filing requirement for "occasional" networks (*e.g.*, seasonal sports networks), thus reducing the paperwork burden for some licensees. The Commission maintained the requirement for "regular" interconnected networks because "[t]hese entities are of too great importance for us to dispense with having this information readily available."[22] The television network rules were not addressed in that proceeding.

7. In 1985, the Commission eliminated the affiliation contract filing requirement for all radio licensees but retained the requirement for television licensees that are affiliated with national networks.[23] In eliminating the radio filing requirement, the Commission observed that there were over 3,400 radio stations affiliated with one or more of the over 100 networks. With such a significant number of program sources and choices, in addition to locally originated programming, the Commission found it unlikely that any one program source could exercise undue influence over any particular radio station. This evolution eliminated the need to collect and monitor affiliation agreements, and, coupled with the review required by the Paperwork Reduction Act and Regulatory Flexibility Act,[24] led the Commission to abolish the filing requirement for radio licensees.

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[9] *Id.* at 462-66.

[10] *Id.* at 467-68. The Commission had prohibited these practices in 1941 for radio networks and affiliates, based on its conclusion that they allowed a network to exert undue influence over its affiliate, thereby limiting licensee discretion and local programming. *Report on Chain Broadcasting, passim.*

[11] *Notice of Proposed Rulemaking* in Docket No. 14710, FCC 62-745 (released July 16, 1962).

[12] *Public Information Amendments to the Administrative Procedure Act*, 5 U.S.C. § 552.

[13] *Order* in Docket No. 14710, FCC 68-954 (released September 20, 1968).

[14] *Report and Order* in Docket No. 14710, 15 RR 2d 1579 (1969) (*Public Inspection of Affiliation Agreements*).

[15] *Id.* at 1585.

[16] *Id.* at 1586.

[17] *Id.* at 1582-85.

[18] *Id.* at 1581, citing *Report of Antitrust Subcommittee of House Committee on the Judiciary*, 85th Cong., 1st Sess., March 13, 1957.

[19] *Public Inspection of Affiliation Agreements* at 1584, n. 9.

[20] *Public Inspection of Affiliation Agreements* at 1588. The Commission adopted the one-document requirement in one sentence, with no further elaboration.

[21] *See Report, Statement of Policy and Order* in Docket No. 20721, 63 FCC 2d 674 (1977).

[22] *Id.* at 688.

[23] *Report and Order* in MM Docket 85-5, 101 FCC 2d 516 (1985) (*Radio Network Affiliation Agreements*).

[24] The Paperwork Reduction Act (44 U.S.C. §§ 3501 *et seq.*) and the Regulatory Flexibility Act (5 U.S.C. §§ 601 *et seq.*) impose responsibilities on regulatory agencies to ensure that the benefits of continued governmental regulation outweigh the costs associated with such regulation. In the *Notice of Proposed Rulemaking* initiating the 1985 proceeding, the Commission had stated that the filing requirement annually placed a paperwork burden of approximately 2,500 hours on the broadcast industry,

8. With respect to television licensees, the Commission stated that the number of national networks and program sources was more limited for broadcast television than for radio, and that the amount of national network programming carried by an affiliated television station was considerably more than that carried by an affiliated radio station. Therefore, the Commission believed that there could be significantly more dependence of the affiliate on the national network for programming. In order to ensure that the licensee maintained ultimate control over programming, the Commission determined that closer scrutiny of national network/affiliate relationships was warranted. Accordingly, the filing requirement was retained for affiliates of national networks.[25] However, the Commission eliminated the rule for stations affiliated with regional and other non-national networks, concluding that they more closely parallel radio networks because they provide less programming to their affiliated stations, which are in turn less dependent on them. Consequently, the Commission determined that the filing requirement could be eliminated for affiliates of such networks.[26]

III. ANALYSIS

9. The primary purpose of requiring broadcast television stations to file their affiliation agreements with the Commission has been to give the Commission the ability to monitor these contractual relationships and ensure that the Commission's restrictions on these relationships are not violated in affiliation agreements. Also, by requiring affiliates to file their affiliation agreements with the Commission, the rule may chill any desire to engage in misbehavior, thereby reducing the likelihood that these agreements will contain provisions that violate the Commission's underlying network/affiliate rules.

10. In general, the major purpose of the network/affiliate rules has been to restrict the potential exercise of market power of networks over their affiliates to the detriment of the public. Specifically, the Commission has argued in the past that network control over affiliates is detrimental to the public because such control potentially reduces the diversity of programming available to the public, especially local programming.[27] In addition, some of the rules concern not only the potential power of existing networks over their affiliates, but also potential implications for third parties, such as advertisers and potential new networks.

11. Since 1985, when we last examined this rule, the video marketplace has changed dramatically. As pointed out in our recent *Further Notice of Proposed Rule Making* addressing broadcast television ownership, there has been an increase in the number of broadcast stations available for affiliation with a broadcast network in nearly every market.[28] Moreover, new, aspiring networks have emerged.[29] As a result of these changes, the bargaining positions of broadcast television networks and commercial broadcast television stations have changed and differ market by market. The recent affiliate switches demonstrate the increased competition between broadcast networks for affiliation with broadcast television stations in different markets, and thus suggest that broadcast networks' market power over their affiliates has diminished to some extent.[30]

12. Given the recent increased competition between broadcast networks for affiliates in different markets, we solicit comment on whether or not there is a continuing need for the Commission to monitor network/affiliate relationships through mandatory filings of their affiliation agreements. We also seek comment on the extent to which filing these contracts with the Commission is necessary to deter violations of the network/affiliate rules. If we conclude that routine filing of agreements is not necessary to deter violations of the rules, we could relieve licensees of the duty to file affiliation agreements routinely, and instead simply require the production of such agreements upon Commission request.

13. Separate and apart from the issue of whether contracts should be filed with the Commission is the issue of whether licensees should be required to make these contracts available to the public. Making these agreements publicly available allows the general public to inspect them and to file complaints where abuses of the public interest are discovered. It also allows third parties (*e.g.*, advertisers), whose commercial interests are affected by these agreements, to determine if their interests are harmed by these agreements. We solicit comment on the importance of these purposes and examples of the general public's use of these filings that illustrate the extent of the benefits from making these filings publicly available.

14. Turning to the possible costs of the rule, we note that there are direct and indirect costs to be considered. The direct costs of filing these agreements are the additional expenses incurred to prepare and submit the filings to the Commission over the expenses incurred to prepare affiliation agreements for their original purpose. We solicit evidence on the size of these costs incurred by filing affiliates.

15. The indirect costs of filing these agreements are more difficult to quantify, potentially more serious, and a result of our requirement that the filings be publicly available. First, networks must bargain with broadcast stations serving different markets to gain access to their potential audiences through affiliation agreements. As mentioned earlier, the number of potential parties to such contracts differs market by market, but generally represents a few potential parties on either side. By making compensation or other data in these filings publicly available, the Commission may facilitate the ability of parties either seeking or offering affili-

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and that the contract terms had become relatively standard in nature. *Notice of Proposed Rulemaking* in MM Docket No. 85-5, 50 Fed. Reg. 2596 (January 17, 1985) (*Radio Network Affiliation Notice*).

[25] *Radio Network Affiliation Agreements* at 519.

[26] *Id.* at 519-20. The Commission took this opportunity to define national network as that contained in (then) Section 73.658(j)(4) -- "any person, entity or corporation which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated television licensees in 10 or more states." *Id.* at 519, n.7.

[27] *Report, Statement of Policy, and Order* in Docket No. 20721, 63 FCC 2d 674, 690 (1977).

[28] *Further Notice of Proposed Rule Making* in MM Docket No. 91-221, 60 Fed. Reg. 6490 (Feb. 2, 1995).

[29] Fox now competes with ABC, CBS, and NBC. Further, United Paramount Network and Warner Brothers Network are beginning to develop as competitors to these networks.

[30] *See* Julie A. Zier, *Fog of war engulfs affiliation battles*, Broadcasting & Cable, Dec. 5, 1994, at 50, for a discussion of recent affiliation changes.

ation to avoid competition. For example, in markets where there are more commercial stations than broadcast networks interested in seeking affiliation agreements, networks might seek, through parallel action, to lower the compensation they pay potential affiliates and could use the public filings to ensure each party is performing as agreed.[31] Alternatively, in markets where there are more broadcast networks seeking affiliation agreements than commercial broadcast stations available, commercial stations could seek to ensure that the compensation that each of them receives is higher than the compensation any one of them alone was willing to accept. In either example, the public availability of the affiliation compensation data facilitates joint monitoring to ensure similar behavior.[32] The Commission solicits comment on the potential for such behavior in light of current market conditions, estimates of the size of these indirect costs, and their consequences, if any, for viewers.

16. Second, making these filings publicly available alters the dynamic of the contracting process. For example, the requirement reduces a network's ability and willingness to craft contractual arrangements with one affiliate to recognize special market conditions of that affiliate. By way of illustration, a network may discern that a new affiliate requires improved local news coverage in order to compete against other television stations in its market and may wish to help fund such improvement because of the financial constraints that the new affiliate faces. However, the network may be reluctant to do so if its other affiliates can discover such improved or different terms and are likely to demand similar terms. Thus, by requiring contracts to be publicly available, our rules make it less likely that the terms are tailored to best suit the needs of the parties to the contract.[33] Confidentiality of the financial terms of affiliates' contracts would break the linkage between concessions offered to one affiliate and negotiations with other affiliates. Networks would be able to tailor affiliation contracts solely to local conditions with less concern for repercussions in other markets. On the other hand, as the Commission previously concluded, public filing of these contracts enables weaker affiliates to attempt to ensure that they receive comparable or competitive compensation to other affiliates of a network, thereby strengthening their overall financial condition and ability to serve the public. Consequently, we solicit comments on the advantages and disadvantages of a network's being able to tailor its contracts versus affiliates' desire to ensure comparable contracts, particularly in terms of the Commission's competition and diversity concerns.

IV. PROPOSALS

17. We propose to eliminate the filing requirement and require broadcast television stations to make their affiliation agreements available to the Commission upon request. We will adopt this proposal if we conclude that the benefits of continuous monitoring of broadcast television station§s affiliation agreements with broadcast television networks no longer exceed their costs. We tentatively conclude that we can continue to enforce our network/affiliate rules through a system of complaint initiated requests for affiliation contract information. Such a system would relieve licensees of the paperwork burden of filing contracts with the Commission, and would reduce the potential anticompetitive effects of general public disclosure. We solicit comment on this tentative conclusion and on whether we can rely on affiliates, or members of the public, to file such complaints.

18. Alternatively, we could continue to require contracts to be filed with the Commission, but maintain the confidentiality of the contracts by limiting access to authorized FCC employees. This modification of our rule would allow us to continue to monitor network/affiliate relations to protect the public interest, while at the same time reducing the indirect costs of the current filing requirement which arise from the public availability of these agreements. However, the Freedom of Information Act requires agencies to disclose documents in certain circumstances. Given that we did not exempt these filings from the Freedom of Information Act in our 1969 *Public Inspection of Affiliation Agreements*, we also solicit comment on whether or not this proposal is a viable option.

19. Another alternative would be to continue the filing requirement but modify it to require that only redacted copies of contracts be made available to the public. These copies would omit any references to the values which determine the affiliate compensation and, possibly, other business sensitive terms. In this way, the public could continue to monitor the issues affecting program diversity in their community and we could continue to monitor the network-affiliate relationship. This option would preserve the benefit of general public scrunity of these agreements, but reduce their potential negative effects on the competition for affiliations.

20. We could, of course, also maintain the rule as it currently stands. We would adopt this option only if we determine that the direct and indirect costs associated with these filings continue to be less than their benefits. We request that comments on the above proposals weigh the benefits and costs in a manner which justifies the particular recommendation a commenter makes.

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[31] *See* B. M. Owen and S. S. Wildman, *Video Economics*, Harvard University Press, (1992) at 166-172 for a discussion of influences on the bargaining position of broadcast television networks and commercial broadcast television stations in negotiating affiliation agreements. For a general overview of the manner in which data dissemination among competitors may facilitate cartel-like behavior, see N.R. Prance, *Price Data Dissemination as a Per Se Violation of the Sherman Act*, 45 U. Pitt. L. Rev. (1983) at 68-78; *see also* Donald S. Clark, Price-Fixing without Collusion: An Antitrust Analysis of Facilitating Practices after Ethyl Corp., 1983 Wis. L. Rev. 887, 900-901 ("The exchange of cost, price or other data reduces a firm's uncertainty about rivals' likely or actual behavior. These exchanges therefore may facilitate the achievement of a consensus on price and output levels, and increase confidence that the consensus can be and is being maintained. In addition, the dissemination of certain types of data can facilitate the discovery of secret discounting or other forms of cheating, increase the likelihood of retaliation, and therefore discourage cheating altogether."); *see also* MCI Telecom. Corp. v. AT&T, 114 S. Ct. 2223, 2233 (1994) for an example of the Commission's concern over this issue.

[32] The literature on data dissemination among competitors in the prior reference addresses this point.

[33] The standardization or uniformity of affiliation contracts was noted in *Radio Network Affiliation Agreements* at 517.

IV. ADMINISTRATIVE MATTERS

21. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments on or before (June 12, 1995), and reply comments on or before (July 12, 1995). To file formally in this proceeding, you must file an original plus five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. 20554.

22. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission Rules. *See generally* 47 C.F.R. Sections 1.1202, 1.1203, and 1.1206(a).

23. Additional Information: For additional information on this proceeding, contact Robert Kieschnick (202-739-0770), Paul Gordon (202-776-1653), or Tracy Waldon (202-739-0770), Mass Media Bureau.

V. INITIAL REGULATORY FLEXIBILITY ANALYSIS

24. *Reason for the Action:* This proceeding was initiated to review and update the Commission's rule concerning the filing of broadcast television network affiliation contracts.

25. *Objective of this Action:* The actions proposed in this *Notice* are intended to reduce concerns over the potential deleterious effects of making some or all the substance of broadcast television affiliation agreements publicly available.

26. *Legal Basis:* Authority for the actions proposed in this *Notice* may be found in Sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154 and 303.

27. *Recording, Recordkeeping, and Other Compliance Requirements Inherent in the Proposed Rule:* The proposals may reduce existing requirements.

28. *Federal Rules that Overlap, Duplicate, or Conflict with the Proposed Rules:* None.

29. *Description, Potential Impact, and Number of Small Entities Involved:* Approximately 1,500 existing television broadcasters of all sizes may be affected by the proposals contained in this decision.

30. *Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the Stated Objectives:* The proposals contained in this *NPRM* are intended to simplify and ease the regulatory burden currently placed on commercial television broadcasters.

31. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared the above Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of this Notice of Proposed Rulemaking, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this *Notice of Proposed Rule Making*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

32. This *Notice of Proposed Rule Making* is issued pursuant to authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: May 9, 1995

BELL ATLANTIC FILES AMENDMENT TO THE DOVER, NEW JERSEY VIDEO DIALTONE TARIFF

Pleading Cycle Established

COMMENTS: May 15, 1995
REPLY COMMENTS: May 19, 1995

On January 27, 1995, Bell Atlantic filed Transmittal No. 741 to introduce video dialtone service in Dover Township, New Jersey. Bell Atlantic subsequently deferred the effective date of the service to May 27, 1995. On May 5, 1995, Bell Atlantic filed an amendment to Transmittal No. 741 to provide supplemental information regarding the development of costs underlying its Dover Township video dialtone service rate elements. In addition, Bell Atlantic provided corrections for several errors on previously provided cost documentation.

Parties filing petitions against Bell Atlantic Transmittal No. 741 may file comments on Bell Atlantic's amended transmittal no later than **May 15, 1995**. Replies must be filed by **May 19, 1995**. The comments should focus on the supplemental cost study information.

An original and four copies of all comments must be filed in accordance with Section 1.51(c) of the Commission's Rules, 47 C.F.R. § 1.51(c). Parties also should hand serve Bell Atlantic with a copy of their comments. In addition, one copy of each pleading must be filed with International Transcription Services (ITS), the Commission's duplicating contractor, at its office at 2100 M Street, N.W., Suite 140, Washington, D.C. 20037 and one copy with the Chief, Tariff Division, Room 518, 1919 M Street, N.W., Washington, D.C. 20554.

For further information, contact Kalpak Gude, Tariff Division, Common Carrier Bureau, at (202) 418-1530.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Comcast Cablevision of Montgomery County, Inc.
Township of Lower Merion, Pennsylvania
CUID No. PA1992

Benchmark Filing To Support
Cable Programming Service Price

MEMORANDUM OPINION AND ORDER

Adopted: March 31, 1995; Released: April 6, 1995

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. Here we consider complaints about the price Comcast Cablevision of Montgomery County, Inc. ("Comcast") was charging for its cable programming service ("CPS") tier in Lower Merion, Pennsylvania, CUID No. PA1992. Comcast has attempted to justify its price through a benchmark showing on FCC Form 393. This Order addresses the reasonableness of Comcast's price only through May 14, 1994. At a later time we will issue a separate order addressing the reasonableness of the price after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a valid complaint. The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with valid CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

II. PROCEDURAL MATTERS

4. The first valid CPS complaint was completed and served on Comcast on February 23, 1994. The Commission received the complaint on February 25, 1994.

5. Comcast attempted to justify its CPS price through an FCC Form 393 filed on March 29, 1994. Comcast amended its justification on June 27, 1994 in response to a Cable Services Bureau Order citing common deficiencies observed in benchmark filings generally.[11] Comcast further amended and supplemented its filings on February 7, 1995 in response to a Cable Services Bureau Public Notice offering operators the opportunity to make optional supplemental filings.[12]

III. DISCUSSION

6. In its amended benchmark filing of February 7, 1995 Comcast calculated a maximum permitted price for the CPS tier of $13.44 per month. Upon review, we have found no apparent errors that would require a recalculation of the maximum permitted price. However, Comcast's actual price for the CPS tier was $13.48 per month. Thus, Comcast has failed to demonstrate that its price for the CPS tier was not unreasonable.

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[1] The findings in this Order do not in any way prejudge the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations. However, to the extent Comcast has sought to take advantage of the refund deferral period under the *Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking*, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (1994) (*"Second Order on Reconsideration"*), the maximum permitted CPS price determined herein might also apply from May 15, 1994 until the date on which Comcast implemented its CPS price under the new regulations. See para. 3, *infra*. Further, to the extent that the price as of March 31, 1994 is found to be excessive, a reduction in Comcast's price for the period after May 14, 1994 may be required to reflect the fact that Comcast's price during the earlier period, which is used as the starting point to calculate its prices for the prospective period, was unreasonable. 47 C.F.R. §76.922(b)(4)(c).

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] *Order* in MM Docket No. 92-266, *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration* at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration* at 4189 n.195.

[11] *Cable Operators' Rate Justification Filings*, DA 94-526, 9 FCC Rcd 7752 (Cab. Serv. Bur. 1994).

[12] *Public Notice: Cable Services Bureau Announces Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases*, DA 94-1556 (Dec. 29, 1994); *see also Public Notice: Cable Services Bureau Announces Extension of Time to File Under Optional Procedures Plan with Respect to Pending Pre-May 15 Benchmark Cases*, DA 95-87 (Jan. 20, 1995).

IV. CONCLUSIONS

7. Upon review of the record herein, we conclude that Comcast's showing supports a maximum reasonable CPS tier price of $13.44 per month (plus franchise fee) for the period February 25, 1994 to May 14, 1994.[13] However, we further determine that the refund at issue is such a de minimis amount that it would not serve the public interest to order a refund.

8. We further conclude that Comcast must reflect in its FCC Form 1200 rate filing for the period after May 14, 1994 the fact that Comcast's price during the earlier period was unreasonable. We reserve the right to make further adjustments to Comcast's prices for the period after May 14, 1994 upon completion of our review of Comcast's FCC Form 1200 rate filing.

9. We further conclude that Comcast has submitted in good faith a timely optional supplemental filing in response to our December 29, 1994 Public Notice.[14] As provided in the Public Notice, we will relieve Comcast of its obligation to obtain advance Commission approval of adjustments to its CPS price for one year following the release of this Order.

10. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the February 25, 1994 complaint against the cable programming service price charged by Comcast Cablevision of Montgomery County, Inc., in Lower Merion, Pennsylvania, CUID No. PA1992, and all other complaints in this franchise area relating to the same price, ARE GRANTED TO THE EXTENT INDICATED HEREIN AND DENIED TO THE EXTENT INDICATED HEREIN.

11. IT IS FURTHER ORDERED that the benchmark filing submitted by Comcast Cablevision of Montgomery County, Inc. with respect to Lower Merion, Pennsylvania, CUID No. PA1992, for the period of February 25, 1994 to May 14, 1994, justifies a maximum price of $13.44 per month (plus franchise fee) for the cable programming service tier.

12. IT IS FURTHER ORDERED, pursuant to Section 76.922(b)(4)(c) of the Commission's Rules, 47 C.F.R. § 76.922(b)(4)(c), that Comcast Cablevision of Montgomery County, Inc. shall, within 30 days of the release of this Order, revise its Form 1200 filing with respect to Lower Merion, Pennsylvania, CUID No. PA1992, for the period beginning May 15, 1994, to reduce the monthly charge per tier as of March 31, 1994 for Tier 2 (Line A6b) to equal the maximum permitted rate (plus franchise fee).

13. IT IS FURTHER ORDERED that Comcast Cablevision of Montgomery County, Inc. shall place into effect, within 30 days after its submission of the revised Form 1200 filing required above, a CPS tier price that reflects the reduction in the CPS rate determined in this Order.

14. IT IS FURTHER ORDERED, pursuant to Section 76.960 of the Commission's Rules, 47 C.F.R. § 76.960, that Comast shall not be required to obtain advance Commission approval of adjustments to its CPS price for one year following the release of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Deputy Chief, Cable Services Bureau

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[13] This finding is based solely on the representations of the operator. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

[14] *Public Notice: Cable Services Bureau Announces Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases*, DA 94-1556 (Dec. 29, 1994).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Comcast Cablevision of Little Rock, Inc.
City of Little Rock, Arkansas
CUID No. AR0191

Benchmark Filing To Support
Cable Programming Service Price

MEMORANDUM OPINION AND ORDER

Adopted: March 31, 1995; Released: April 6, 1995

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. Here we consider complaints about the price Comcast Cablevision of Little Rock, Inc. ("Comcast") was charging for its cable programming service ("CPS") tier in Little Rock, Arkansas, CUID No. AR0191. Comcast has attempted to justify its price through a benchmark showing on FCC Form 393. This Order addresses the reasonableness of Comcast's price only through May 14, 1994. At a later time we will issue a separate order addressing the reasonableness of the price after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a valid complaint. The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with valid CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

II. PROCEDURAL MATTERS

4. The first valid CPS complaint was completed and served on Comcast on February 24, 1994. The Commission received the complaint on February 25, 1994.

5. Comcast attempted to justify its CPS price through an FCC Form 393 filed on March 29, 1994. Comcast amended its justification on June 27, 1994 in response to a Cable Services Bureau Order citing common deficiencies observed in benchmark filings generally.[11] Comcast further amended and supplemented its filings on February 7, 1995 in response to a Cable Services Bureau Public Notice offering operators the opportunity to make optional supplemental filings.[12]

III. DISCUSSION

6. In its amended benchmark filing of February 7, 1995 Comcast calculated a maximum permitted price for the CPS tier of $12.01 per month. Upon review, we have found no apparent errors that would require a recalculation of the maximum permitted price. However, Comcast's actual price for the CPS tier was $12.02 per month. Thus, Comcast has failed to demonstrate that its price for the CPS tier was not unreasonable.

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[1] The findings in this Order do not in any way prejudge the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations. However, to the extent Comcast has sought to take advantage of the refund deferral period under the *Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking*, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (1994) (*"Second Order on Reconsideration"*), the maximum permitted CPS price determined herein might also apply from May 15, 1994 until the date on which Comcast implemented its CPS price under the new regulations. See para. 3, *infra*. Further, to the extent that the price as of March 31, 1994 is found to be excessive, a reduction in Comcast's price for the period after May 14, 1994 may be required to reflect the fact that Comcast's price during the earlier period, which is used as the starting point to calculate its prices for the prospective period, was unreasonable. 47 C.F.R. §76.922(b)(4)(c).

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] *Order* in MM Docket No. 92-266, *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration* at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration* at 4189 n.195.

[11] *Cable Operators' Rate Justification Filings*, DA 94-526, 9 FCC Rcd 7752 (Cab. Serv. Bur. 1994).

[12] *Public Notice: Cable Services Bureau Announces Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases*, DA 94-1556 (Dec. 29, 1994); *see also Public Notice: Cable Services Bureau Announces Extension of Time to File Under Optional Procedures Plan with Respect to Pending Pre-May 15 Benchmark Cases*, DA 95-87 (Jan. 20, 1995).

IV. CONCLUSIONS

7. Upon review of the record herein, we conclude that Comcast's showing supports a maximum reasonable CPS tier price of $12.01 per month (plus franchise fee) for the period February 25, 1994 to May 14, 1994.[13] However, we further determine that the refund at issue is such a de minimis amount that it would not serve the public interest to order a refund.

8. We further conclude that Comcast must reflect in its FCC Form 1200 rate filing for the period after May 14, 1994 the fact that Comcast's price during the earlier period was unreasonable. We reserve the right to make further adjustments to Comcast's prices for the period after May 14, 1994 upon completion of our review of Comcast's FCC Form 1200 rate filing.

9. We further conclude that Comcast has submitted in good faith a timely optional supplemental filing in response to our December 29, 1994 Public Notice.[14] As provided in the Public Notice, we will relieve Comcast of its obligation to obtain advance Commission approval of adjustments to its CPS price for one year following the release of this Order.

10. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the February 25, 1994 complaint against the cable programming service price charged by Comcast Cablevision of Little Rock, Inc., in Little Rock, Arkansas, CUID No. AR0191, and all other complaints in this franchise area relating to the same price, ARE GRANTED TO THE EXTENT INDICATED HEREIN AND DENIED TO THE EXTENT INDICATED HEREIN.

11. IT IS FURTHER ORDERED that the benchmark filing submitted by Comcast Cablevision of Little Rock, Inc. with respect to Little Rock, Arkansas, CUID No. AR0191, for the period of February 25, 1994 to May 14, 1994, justifies a maximum price of $12.01 per month (plus franchise fee) for the cable programming service tier.

12. IT IS FURTHER ORDERED, pursuant to Section 76.922(b)(4)(c) of the Commission's Rules, 47 C.F.R. § 76.922(b)(4)(c), that Comcast Cablevision of Little Rock, Inc. shall, within 30 days of the release of this Order, revise its Form 1200 filing with respect to Little Rock, Arkansas, CUID No. AR0191, for the period beginning May 15, 1994, to reduce the monthly charge per tier as of March 31, 1994 for Tier 2 (Line A6b) to equal the maximum permitted rate (plus franchise fee).

13. IT IS FURTHER ORDERED that Comcast Cablevision of Little Rock, Inc. shall place into effect, within 30 days after its submission of the revised Form 1200 filing required above, a CPS tier price that reflects the reduction in the CPS rate determined in this Order.

14. IT IS FURTHER ORDERED, pursuant to Section 76.960 of the Commission's Rules, 47 C.F.R. § 76.960, that Comcast shall not be required to obtain advance Commission approval of adjustments to its CPS price for one year following the release of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Deputy Chief, Cable Services Bureau

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[13] This finding is based solely on the representations of the operator. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

[14] *Public Notice: Cable Services Bureau Announces Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases*, DA 94-1556 (Dec. 29, 1994).

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
April 3, 1995

Released: April 7, 1995

Smedley D. Butler
President
Genesis Cable Corp.
One Boar's Head Place, Suite C
Charlottesville, VA 22903-4612

IN REPLY REFER TO:
DA 95-726

Dear Mr. Butler:

This letter is in reference to your letter dated April 3, 1995, with respect to a complaint filed December 23, 1993, against the price Genesis Cable was charging for cable programming service in the Town of McClellanville, South Carolina, CUID No. SC0384. In that letter, you state that Genesis Cable is not required to justify its rates prior to May 15, 1994, because Genesis Cable's McClellanville, South Carolina system has 228 subscribers. Based on the information you have provided, it appears that the McClellanville system qualifies as a "small system" pursuant to 47 C.F.R. § 76.901(c), and was therefore exempt from rate regulation until May 15, 1994.

We will rule at a later date on Genesis Cable's justification under the Commission's revised rate regulations of its cable programming service rates in McClellanville beginning May 15, 1994.

Should you have any questions regarding this matter, please contact Peter G. Wolfe at (202) 739-0783.

Sincerely,

Gregory J. Vogt
Deputy Chief
Cable Services Bureau

cc: Town of McClellanville

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

The Southern New England Telephone Company

Petition for Waiver of Section 69.106
of the Commission's Rules To Offer
Video Dialtone Service in a
Market Trial in Connecticut

The Southern New England Telephone Company
Tariff F.C.C. No. 40 — Transmittal No. 641

ORDER

Adopted: April 6, 1995; Released: April 6, 1995

Reply Comment Date: April 28, 1995

By the Chief, Tariff Division, Common Carrier Bureau:

1. On April 3, 1995, the Southern New England Telephone Company (SNET) filed a motion for extension of time to file reply comments in the above referenced proceedings. In response to a Public Notice released on March 15, 1995,[1] the National Cable Television Association, Tele-Communications, Inc., MCI Telecommunications Corporation, and Cablevision Systems Inc./New England Cable Television Association filed comments on Transmittal No. 641, the Part 69 waiver request and/or SNET's proposed accounting and cost allocation methodology plan to provide local exchange and exchange access service over its network during the market trial. Under the terms of that Public Notice, reply comments are due on April 7, 1995. SNET requests that the deadline for filing reply comments be extended until April 28, 1995.[2]

2. SNET states that additional time is necessary to allow it to fully address the numerous and complex issues raised in the oppositions to Transmittal No. 641, the Part 69 waiver request, and its accounting and cost allocation plan.

3. We do not routinely grant extensions of time.[3] In this case, however, we believe that it is important to allow SNET and other parties adequate time to fully address the issues raised in these proceedings. Therefore, we are willing to grant all parties an extension of time in which to file reply comments until April 28, 1995.

4. Accordingly, IT IS ORDERED that the SNET's motion for extension of time IS GRANTED.[4]

FEDERAL COMMUNICATIONS COMMISSION

Geraldine A. Matise
Chief, Tariff
Common Carrier Bureau

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[1] Public Notice, SNET Petitions For Waiver of Part 69 Rate Structure, Files Tariff Introducing Video Dialtone Market Trial In Connecticut, Includes Accounting and Cost Allocation Plan, DA 95-494 (rel. March 15, 1995).

[2] Transmittal No. 641 is currently scheduled to take effect on June 7, 1995. *See* Southern New England Telephone Company, Tariff F.C.C. No. 40, Transmittal No. 646 (filed April 6, 1995).

[3] *See* Section 1.46(a) of the Commission's rules, 47 C.F.R. 1.46(a).

[4] This action is taken pursuant to Sections 4(j) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(j) and 155(c), and authority delegated thereunder pursuant to Sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91 and 0.291.

Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T Communications Transmittal No. 8233
Revisions to Tariff F.C.C. No. 1

ORDER

Adopted: April 12, 1995; Released: April 12, 1995

By the Chief, Tariff Division, Common Carrier Bureau:

1. On March 2, 1995, AT&T Communications filed Transmittal No. 8233 to revise their Tariff F.C.C. No. 1. In Transmittal 8233, AT&T Communications modifies AT&T Maritime Mobile Service by removing sent paid coin calls as a billing option. AT&T Communications states that this filing is being made in response to concerns about the fraudulent use of the sent paid coin billing option. Transmittal 8233 is scheduled to become effective on April 13, 1995.[1]

2. On March 9, 1995, Mr. Keith Maydak filed a petition to suspend and investigate or reject Transmittal 8233. AT&T did not file a reply to the petition. In his petition, Keith Maydak contends that suspension or rejection is warranted because the sent paid coin payment option for AT&T Maritime Mobile Service calls is only available through AT&T Communications and no other carrier presently has a similar service offering. Maydak Petition at 1-2. Also, Maydak claims that the elimination of this option may leave many citizens, particularly those lacking residential telephone service, without alternative means to complete calls to vessels on the high seas. Maydak Petition at 2.

3. We conclude that the petitioner failed to comply with Sections 1.773(a)(1) and 1.773(a)(2)(i) of the rules when he filed his petition to suspend and investigate or reject because the petition did not specify the carrier transmittal number[2] and was filed more than 6 days after the date of the tariff filing.[3]

4. Accordingly, IT IS ORDERED that the petition to suspend and investigate or reject AT&T Communications' revisions to Tariff F.C.C. No. 1, Transmittal No. 8233, filed by Keith Maydak, an individual, IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Geraldine Matise
Chief, Tariff Division

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[1] Transmittal No. 8233 was originally filed on 14 days' notice, to become effective on March 16, 1995.

[2] Commission rules require that petitions seeking suspension or rejection of tariff filings must specify the carrier transmittal number. *See* 47 C.F.R. § 1.773(a)(1).

[3] Under our rules, petitions relating to tariffs filed on fourteen days notice must be filed within six days after the tariff is filed. *See* 47 C.F.R. § 1.773(a)(2)(i).

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 94-97

In the Matter of

US West Communications, Inc. Transmittal No. 602
Revisions to Tariff F.C.C. No. 5

ORDER

Adopted: April 14, 1995; Released: April 14, 1995

By the Deputy Chief, Tariff Division, Common Carrier Bureau:

1. On March 17, 1995, US West Communications, Inc. (US West) filed Transmittal No. 602 to revise its Tariff F.C.C. No. 5. Transmittal No. 602, which is scheduled to become effective on April 16, 1995, would add new rate elements for interconnector-designated equipment requested by interconnectors for virtual collocation. The rate elements include the interconnector-designated equipment, maintenance spare parts, power, installation, bay space, and alarm and monitoring of the interconnector-designated equipment. No petitions were filed against the US West transmittal.

2. The transmittal filed by US West raises the same issues as the permanent virtual collocation tariffs that were suspended for one day and made subject to the investigation initiated in the *Virtual Collocation Tariff Suspension Order*.[1] Therefore, the above-captioned transmittal is suspended for one day, until April 17, 1995, and will be subject to the investigation initiated in the *Virtual Collocation Tariff Suspension Order*. This transmittal will also be subject to an accounting order to facilitate any refunds that may later prove necessary.

3. Accordingly, IT IS ORDERED that, pursuant to Section 204(a) of the Communications Act of 1934, 47 U.S.C. § 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the revision to US West Communications, Inc. Tariff F.C.C. No. 5, Transmittal No. 602, IS SUSPENDED for one day and an investigation of the referenced tariff transmittal IS INSTITUTED.

4. IT IS FURTHER ORDERED that US West Communications, Inc. SHALL FILE tariff revisions within five business days of the release date of this Order to reflect this suspension.

5. IT IS FURTHER ORDERED that, for these purposes, the Division waives Sections 61.56, 61.58, and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.56, 61.58, and 61.59. US West Communications, Inc. should cite the "DA" number of the instant Order as the authority for this filing.

6. IT IS FURTHER ORDERED that, pursuant to Section 204(a) of the Communications Act of 1934, 47 U.S.C. § 204(a), US West Communications, Inc. shall keep accurate account of all amounts received by reason of the rates that are the subject of this investigation.

FEDERAL COMMUNICATIONS COMMISSION

David A. Nall
Deputy Chief, Tariff Division
Common Carrier Bureau

[1] Ameritech Operating Companies *et al.*, CC Docket No. 94-97, Order, 10 FCC Rcd 1960 (*Virtual Collocation Tariff Suspension Order*). The *Virtual Collocation Tariff Suspension Order* suspended for one day, imposed an accounting order, and initiated an investigation of the permanent virtual collocation tariffs filed on September 1, 1994 by the Tier 1 local exchange carriers subject to expanded interconnection requirements. In the *Phase I Designation Order*, the Bureau designated issues for investigation regarding the overhead loadings in the LECs' virtual collocation tariffs, and Bell Atlantic's maintenance-related charges. Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport, CC Docket No. 94-97, Phase I, Order Designating Issues for Investigation, DA 95-374 (rel. Feb. 28, 1995) (*Phase I Designation Order*).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 95-31

In the Matter of

Reexamination of the Comparative
Standards for New Noncommercial
Educational Applicants

ORDER GRANTING EXTENSION OF TIME FOR FILING COMMENTS AND REPLY COMMENTS

Adopted: April 20, 1995; Released: April 21, 1995

By the Chief, Mass Media Bureau:

1. On March 17, 1995, the Commission released a *Notice of Proposed Rulemaking* (*"Notice"*), FCC 95-79, 60 Fed. Reg. 15,527 (March 24, 1995) in this proceeding, inviting additional comments relating to possible modification of the criteria currently used to select among competing applicants for new noncommercial educational ("NCE") broadcast facilities. The deadline for filing comments currently is April 24, 1995, and the deadline for filing reply comments is May 10, 1995.

2. On April 18, 1995, a joint request for extension of time for filing comments and reply comments was filed by The Association of America's Public Television Stations, National Public Radio, the National Federation of Community Broadcasters, and various other NCE broadcast licensees (hereafter the "Joint Petitioners"). The joint request asks that the comment and reply deadlines be extended by three weeks. Under the proposed schedule, comments would be due on May 15, 1995, and reply comments due by May 31, 1995.

3. The Joint Petitioners state that, while the *Notice* is largely devoted to a discussion of the differing proposals submitted by the commenters, they have "recently met in an attempt to resolve some of their differences and made significant progress in finding common ground." Joint Request at 1-2. The Joint Petitioners request the extension of time in order to continue their efforts to close the gap between their widely divergent viewpoints, claiming that the additional time is required because of "the press of other business, including the expedited discovery proceedings in the remanded must carry case, and the difficulty of scheduling meetings among the representatives of the parties." *Id.* at 2. Grant of the extension request will enable the Joint Petitioners to explore further the possibility of narrowing their differences and presenting the Commission with comments in substantial agreement concerning how best to frame the comparative issue in NCE cases. This, they claim, will materially facilitate the resolution of this proceeding and will not prejudice the interests of any other party.

4. As set forth in Section 1.46 of the Commission's Rules, 47 C.F.R. §1.46, it is our policy that extensions of time for filing comments in rulemaking proceedings will not be granted routinely. This is especially the case where, as here, the Commission has established short comment and reply periods due to its desire to resolve the questions presented expeditiously. *See Notice* at ¶ 1. However, under the circumstances described above, we believe that the requested extension of time to file comments and reply comments is warranted. Substantial agreement between the interested and affected parties will facilitate resolution of the issues raised in the *Notice*, and thus it appears reasonable to provide the commenting parties with additional time to address these issues.

5. Accordingly, IT IS ORDERED, that the Joint Request for Extension of Time filed by the Joint Petitioners IS GRANTED, the time for filing comments in this proceeding IS EXTENDED to May 15, 1995, and the time for filing reply comments IS EXTENDED to May 31, 1995.

6. This action is taken pursuant to authority found in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and Sections 0.204(b), 0.283, and 1.45 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 95-20

In the Matter of

Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services

ORDER

Adopted: April 24, 1995; Released: April 25, 1995

Reply Date: May 19, 1995

By the Chief, Policy and Program Planning Division:

1. On April 19, 1995, the United States Telephone Association (USTA) filed a motion for an extension of time to file reply comments in response to the *Notice of Proposed Rulemaking* in the above-captioned proceeding.[1] In addition, on April 21, 1995, a joint motion for an extension was filed by MCI Telecommunications Corporation, CompuServe Incorporated, The Information Technology Association of America, Association of Telemessaging Services International, Inc., Ad Hoc Telecommunications Users Committee, Prodigy Services Company, Newspaper Association of America, and Information Industry Association (Joint Parties). Reply Comments are scheduled to be filed by April 28, 1995. USTA requests that the deadline for filing reply comments be extended until May 12, 1995, and the Joint Parties request a four-week extension, until May 26, 1995.

2. USTA states that additional time is necessary to allow it to address fully the issues raised in the comments. USTA argues that in view of the large number of comments and the substantial material contained in the comments, an extension will permit all parties to respond more fully to the issues raised in the comments. USTA adds that although it did not anticipate being active in this proceeding, it must reconsider that decision given the issues raised by specific parties.

3. The Joint Parties similarly argue that they need additional time in order to respond thoroughly to the broad range of issues raised in the comments. The Joint Parties state that coordination with outside consultants, who are reviewing the studies submitted by the Bell Operating Companies' consultants in the initial round, will take substantial additional time. In addition, the Joint Parties argue that commenters raise additional regulatory issues that must be addressed. Finally, the Joint Parties argue that they have limited staff to address the issues raised given all of the Commission deadlines in other significant proceedings in which they are participants.

4. We do not routinely grant extensions of time.[2] In this case, however, we believe that the public interest would be served by providing parties with additional time to address more fully the issues raised in this proceeding. We believe that a three-week extension will provide sufficient time for all parties to file reply comments. We therefore grant all parties an extension of time for filing reply comments, and extend the filing dates for reply comments until May 19, 1995.

5. According, IT IS ORDERED that USTA's and the Joint Parties' Requests for Extension of Time IS GRANTED to the extent provided herein, and otherwise IS DENIED.[3]

FEDERAL COMMUNICATIONS COMMISSION

James D. Schlichting
Chief, Policy and Program
Planning Division
Common Carrier Bureau

[1] *See In the Matter of Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*, Notice of Proposed Rulemaking (NPRM), CC Docket No. 95-20, FCC 95-48, rel. Feb. 21, 1995.

[2] 47 C.F.R. § 1.46(a).

[3] This action is taken pursuant to Sections 4(j) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(j) and 155(c), and authority delegated thereunder pursuant to Sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91 and 0.291.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 94-97

In the Matter of

Southwestern Bell Telephone Company
Revisions to Tariff F.C.C. No. 73

Transmittal No. 2440

ORDER

Adopted: April 25, 1995; **Released: April 27, 1995**

By the Chief, Tariff Division, Common Carrier Bureau:

1. On March 15, 1995, Southwestern Bell Telephone Company (SWB) filed Transmittal No. 2440 to revise its Tariff F.C.C. No. 73. Transmittal No. 2440, which is scheduled to become effective on April 29, 1995, would provide interconnectors with the capability for remote monitoring and control of interconnector-designated central office equipment in a virtual collocation arrangement by utilizing an alarm collection device.[1] SWB also proposes rate levels for the alarm collection device. No petitions were filed against the SWB transmittal.

2. The transmittal filed by SWB raises the same issues as the permanent virtual collocation tariffs that were suspended for one day and made subject to the investigation initiated in the *Virtual Collocation Tariff Suspension Order*.[2] Therefore, the above-captioned transmittal is suspended for one day, until April 30, 1995, and will be subject to the investigation initiated in the *Virtual Collocation Tariff Suspension Order*. This transmittal will also be subject to an accounting order to facilitate any refunds that may later prove necessary.

3. Accordingly, IT IS ORDERED that, pursuant to Section 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the revision to Southwestern Bell Telephone Company Tariff F.C.C. No. 73, Transmittal No. 2440, IS SUSPENDED for one day and an investigation of the referenced tariff transmittal IS INSTITUTED.

4. IT IS FURTHER ORDERED that Southwestern Bell Telephone Company SHALL FILE tariff revisions within five business days of the release date of this Order to reflect this suspension.

5. IT IS FURTHER ORDERED that, for these purposes, we waive Sections 61.56, 61.58, and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.56, 61.58, and 61.59. Southwestern Bell Telephone Company should cite the "DA" number of the instant Order as the authority for this filing.

6. IT IS FURTHER ORDERED that, pursuant to Section 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 204(a), Southwestern Bell Telephone Company shall keep accurate account of all amounts received by reason of the rates that are the subject of this investigation.

FEDERAL COMMUNICATIONS COMMISSION

Geraldine A. Matise
Chief, Tariff Division
Common Carrier Bureau

[1] An alarm collection device provides remote monitoring and control functions to allow the interconnector to track circuit functions, reconfigure circuits, and supervise the operation of the interconnector-designated equipment. This device also allows SWB to monitor the interconnector-designated equipment for purposes of maintenance and repair. Description and Justification, Tr. 2440, March 15, 1995.

[2] Ameritech Operating Companies *et. al.*, CC Docket No. 94-97, Order, 10 FCC Rcd 1960 (1994) (*Virtual Collocation Tariff Suspension Order*). The *Virtual Collocation Tariff Suspension Order* suspended for one day and initiated an investigation of the permanent virtual collocation tariffs filed on September 1, 1994 by the Tier 1 local exchange carriers subject to expanded interconnection requirements. In the *Phase I Designation Order*, the Bureau designated issues for investigation regarding the overhead loadings in the LECs' virtual collocation tariffs, and Bell Atlantic's maintenance-related charges. Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport, CC Docket No. 94-97, Phase I, Order Designating Issues for Investigation, DA 95-374, (released Feb. 28, 1995).

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 94-128

In the Matter of

Open Network Architecture
Tariffs of US West
Communications, Inc.

ORDER

Adopted: April 26, 1995; Released: April 26, 1995

By the Chief, Tariff Division, Common Carrier Bureau:

1. On January 26, 1994, US West Communications, Inc., (US West) filed Transmittal No. 446, to revise its open network architecture (ONA) rates as required by the Commission.[1] On May 25, 1994, the Common Carrier Bureau (Bureau) initiated an investigation into US West's revised ONA tariffs.[2] The Bureau designated issues in that investigation on November 8, 1994.[3]

2. Implementing ONA requires some rational means for apportioning joint and common switch investment among basic service elements (BSEs).[4] In the ONA context, the Bureau concluded that any reasonable method of apportioning switching costs would require development of an investment cost allocation model, which a carrier would use to allocate investment in switches to correspond to its use of the switch to provide each basic service element.[5] Therefore, US West used a computer model called the Switching Cost Model (SCM) to develop investment data on which to base its ONA rates.

3. SCM contains information on switches that switch vendors consider proprietary, and the model itself may represent the proprietary intellectual property of US West.[6] Accordingly, the Bureau established special procedures which were adequate to protect proprietary material without unreasonably restricting intervenors' participation in the tariff investigation.[7] Those procedures were patterned closely on the Commission's procedures in the first ONA investigation. First, US West was required to hirean independent reviewer to examine SCM, and that independent reviewer was required to examine SCM and make its results available to intervenors, after redacting proprietary information.[8] Second, US West was required to develop a redacted model, *i.e.*, a version of SCM that would allow intervenors to see the effects of changes in SCM inputs on SCM outputs, without allowing intervenors to see proprietary information. US West was directed to allow intervenors to examine the redacted SCM model pursuant to a nondisclosure agreement.[9]

4. On April 25, 1995, MCI Telecommunications Corporation (MCI) filed a motion for extension of time to file comments to US West's direct case. MCI claims that the Bureau directed US West to provide "certain documents" to MCI on April 19, 1995, and to permit MCI to review redacted SCM for two additional days after receipt of this documentation.[10] According to MCI, as a result of "scheduling conflicts," MCI's consultants will not be able to review redacted SCM prior to May 2, 1995.[11] MCI states that it will need additional time to consider the impact of MCI's review on its contemplated pleadings in this inves-

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[1] Open Network Architecture Tariffs of Bell Operating Companies, CC Docket No. 92-91, 9 FCC Rcd 440, 463 (para. 62) (1993) (*ONA Final Order), recon. denied*, FCC 95-27 (released Feb. 14, 1995). In addition to directing US West to refile its ONA rates, the Commission concluded an investigation of ONA rates filed by other Bell Operating Companies in that Order.

[2] US West Communications, Inc., Open Network Architecture Tariffs, 9 FCC Rcd 2522 (Com. Car. Bur. 1994) (*US West ONA Suspension Order).*

[3] Open Network Architecture Tariffs of US West Communications, Inc., CC Docket No. 94-128, 9 FCC Rcd 6710 (Com. Car. Bur. 1994) (*US West ONA Designation Order).*

[4] In the *Part 69 ONA Order*, the Commission ordered the BOCs to file tariffs unbundling optional service offerings from their existing feature group access arrangements. These optional service offerings are BSEs. Amendments to Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, CC Docket No. 89-79, Report and Order, Order on Reconsideration, and Supplemental Notice of Proposed Rulemaking, 6 FCC Rcd 4524 (1991) (*Part 69 ONA Order), modified on recon.* 7 FCC Rcd 5235 (1992), *further modified on recon.*, 8 FCC Rcd 3114 (1993). Basic service elements were distinguished from essential, underlying switching and transmission services offered by the BOCs, which are called basic serving arrangements (BSAs). *See Part 69 ONA Order*, 6 FCC Rcd at 4526 (para. 8).

[5] Commission Requirements for Cost Support Material To Be Filed with Open Network Architecture Access Tariffs, 7 FCC Rcd 521, 523-24 (para. 17) (Com. Car. Bur. 1991) (*SCIS In Camera Order), review denied*, 8 FCC Rcd 422 (1993).

[6] *See* Commission Requirements for Cost Support Material To Be Filed with Open Network Architecture Access Tariffs, 7 FCC Rcd 1526, 1527 (para. 8) (Com. Car. Bur. 1992) (*SCIS Disclosure Order), aff'd.* 9 FCC Rcd 180 (1993). *See also* Allnet Communications Services, Inc., FOIA Control No. 92-266, 7 FCC Rcd 6329, 6330-31 (paras. 14-17) (1992) (*Allnet FOIA Review Order), aff'd.* Allnet Communications Services, Inc. v. FCC, 800 F. Supp. 984 (D.D.C. 1992), *aff'd.* Allnet Communications Services, Inc. v. FCC, No. 92-5351, slip op. (D.C. Cir. May 27, 1994). The Bureau and the Commission said that their conclusions in those Orders applied to both SCM and the Switching Cost Information System (SCIS), a computer-based cost model used by BOCs other than US West. *SCIS Disclosure Order*, 7 FCC Rcd at 1526 n.5; *Allnet FOIA Review Order*, 7 FCC Rcd at 6331 n.2.

[7] *US West ONA Designation Order*, 9 FCC Rcd at 6714 (para. 18).

[8] *Id.* at 6714 (paras. 19-21).

[9] *Id.* at 6714 (para. 18). On December 8, 1994, MCI filed an application for review of the *US West ONA Designation Order*, arguing that the procedures established in that Order were too restrictive to allow meaningful participation in the investigation. US West filed an opposition to MCI's application, and MCI filed a reply. The Commission will consider MCI's application in a future Order.

[10] MCI Motion at 1.

[11] *Id.* at 1-2.

tigation.[12] MCI requests an extension of five weeks, until June 1, 1995, to file its comments to US West's direct case.[13]

5. We have reviewed MCI's motion. It is the policy of the Commission that motions for extension of time shall not be routinely granted.[14] Nevertheless, in this case, we believe that the public interest would be best served by enabling parties to participate as fully as possible in the ongoing US West ONA investigation. Intervenors can bring experience and resources to the analysis of rates under investigation that may not be available to the Commission otherwise.[15] Accordingly, we hereby extend the deadlines previously established in this investigation.

6. We conclude, however, that MCI has not justified extending its filing date to June 1, 1995. MCI has had US West's direct case since March 8, 1995. The report on SCM has been available to intervenors since March 24, 1995. MCI should have completed its analysis of this evidentiary material by this time. Therefore, five additional weeks seems more than necessary to incorporate the results of two days of redacted SCM analysis into MCI's comments. Currently, oppositions to US West's direct case are due to be filed on April 27, 1995.[16] We extend the deadline for filing oppositions to the direct case to May 11, 1995. Replies to the oppositions are currently due May 12, 1995.[17] We extend the deadline for filing replies to May 26, 1995.

7. Accordingly, IT IS ORDERED that oppositions to the direct case in the captioned proceeding SHALL BE FILED no later than May 11, 1995.

8. IT IS FURTHER ORDERED that replies to the oppositions to the direct case in the captioned proceeding SHALL BE FILED no later than May 26, 1995.

FEDERAL COMMUNICATIONS COMMISSION

Geraldine A. Matise
Chief, Tariff Division
Common Carrier Bureau

[12] *Id.* at 2.
[13] *Id.* at 1.
[14] Section 1.46(a) of the Commission's Rules, 47 C.F.R. § 1.46(a).
[15] *See* 800 Data Base Access Tariffs and the 800 Service Management System Tariff, CC Docket No. 93-129, 9 FCC Rcd 715, 718 (para. 11) (1994).
[16] *See* Public Notice, Tariff Division Revises Pleading Cycle in US West ONA Investigation, DA 95-524 (released Mar. 17, 1995).
[17] *Id.*

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

GTE Service Corporation

Revised Zone Density Pricing Plan

ORDER

Adopted: May 1, 1995; Released: May 2, 1995

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. In this Order, the Common Carrier Bureau (Bureau) approves the revised zone density pricing plan filed by the GTE Service Corporation on behalf of the GTE Telephone Operating Companies and the GTE System Telephone Companies (collectively, GTE). As discussed below, we find that the revised plan reasonably implements the zone density pricing authorized by the Commission in the *Virtual Collocation Order*.[1] Accordingly, GTE's tariff8 revisions filed under Transmittal No. 931 may become effective, as scheduled, on May 8, 1995.[2]

II. BACKGROUND

A. Commission Requirements

2. In the *Special Access Physical Collocation Order*, the Commission granted all local exchange carriers (LECs)[3] implementing special access expanded interconnection arrangements additional pricing flexibility in order to bring their special access rates more in line with their costs.[4] To implement this additional pricing flexibility, the Commission permitted each affected LEC to establish, subject to Commission approval, zones within each study area and required each central office in that study area to be assigned to one of the zones. Once plans were approved, LECs could file tariffs establishing different rates in each zone. The Commission required the LECs to show they assigned each central office to a zone using criteria reflecting cost-related characteristics, such as the amount of traffic that passes through a central office. Geographic contiguity could, under certain conditions, be a secondary, less important consideration.[5] In the *Switched Transport Physical Collocation Order*, the Commission directed the LECs to use the same zone definitions for switched transport and special access.[6] The Bureau has previously approved zone density pricing plans filed by a number of LECs, including GTE.[7]

B. The Revised Zone Density Plan

3. GTE filed its original zone density pricing plan on February 25, 1993.[8] That plan was approved by the Bureau on June 18, 1993.[9] GTE filed its "Request for Approval of Revised Zone Density Pricing Plan" (Revised Plan) on October 20, 1994. As of this date, GTE has not yet included zone pricing in its access tariffs. In its revised plan, GTE does not change the manner in which it measures the traffic density through each of its wire centers.[10] Rather, GTE's revised plan changes the manner in which central offices are assigned to zones. According to GTE, the origi-

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[1] Expanded Interconnection with Local Telephone Company Facilities, Report and Order and Notice of Proposed Rulemaking, Memorandum Opinion and Order, 9 FCC Rcd 5154 (1994) (*Virtual Collocation Order*), *aff'g in part* 7 FCC Rcd 7369 (1992) (*Special Access Physical Collocation Order*), *recon.*, 8 FCC Rcd 127 (1992), *vacated in part and remanded sub nom. Bell Atlantic Corp. v. FCC*, 24 F.3d 1441 (D.C. Cir. 1994); Second Memorandum Opinion and Order on Reconsideration, 8 FCC Rcd 7341 (1993) (*First Reconsideration Order*); Second Report and Order and Third Notice of Proposed Rulemaking, 8 FCC Rcd 7374 (1993) (*Switched Transport Physical Collocation Order*). While the U.S. Court of Appeals for the District of Columbia Circuit vacated the *Special Access Physical Collocation Order* insofar as it required pyhsical collocation for special access services, the zone density pricing portion of that Order was reaffirmed in the *Virtual Collocation Order*.

[2] GTE filed the tariff revisions with Transmittal No. 931 on December 2, 1994, scheduled to become effective February 15, 1995. By Transmittal No. 948 filed on February 15, 1995, GTE deferred the effective date of the tariff until April 15, 1995. The Tariff Division ordered GTE to defer the effective date until May 8, 1995.

[3] Tier 1 LECs are companies having annual revenues from regulated telecommunications operations of $100 million or more for a sustained period of time. *See* Commission Requirements for Cost Support Material To Be filed With 1990 Annual Access Tariffs, Order, 5 FCC Rcd 1364 (Com. Car. Bur. 1990).

[4] *See Special Access Physical Collocation Order*, 7 FCC Rcd at 7373, 7454.

[5] *See* Section 61.38(b)(4) of the Commission's Rules, 47 C.F.R. § 61.38(b)(4); *see also Special Access Physical Collocation Order*, 7 FCC Rcd at 7455 and n.415.

[6] *Switched Transport Physical Collocation Order*, 8 FCC Rcd at 7429-29.

[7] *See* BellSouth Telecommunications, Inc., GTE Service Corporation, Lincoln Telephone and Telegraph Co., NYNEX Telephone Companies, Pacific Bell, and Rochester Telephone Corporation Zone Density Pricing Plans, Order, 8 FCC Rcd 4443 (1993) (*First Zone Density Order*); *see also* Bell Atlantic Telephone Companies, Centel Telephone Company, Southwestern Bell Telephone Company, United Telephone Companies Zone Density Pricing Plans, 8 FCC Rcd 5529 (Com. Car. Bur. 1993); Ameritech Operating Companies, 8 FCC Rcd 5529 (Com. Car. Bur. 1993); US West Communications and Southern New England Telephone Company Zone Density Pricing Plans, 8 FCC Rcd 7267 (Com. Car. Bur. 1993).

[8] On March 12, 1993, GTE submitted additional supporting information requested by the Bureau. After further examination of the plan, the Bureau requested, and received, clarification from GTE.

[9] *See First Zone Density Order*, 8 FCC Rcd 4443 (1993).

[10] The revised plan uses the same measure of traffic density for each of GTE's serving wire centers as the original zone density pricing plan used. This measure is determined by first converting switched and special access traffic into equivalent DS1s and then ranking the offices from zone one to zone three, with zone one having the highest traffic density and zone three the lowest. *See First Zone Density Order*, 8 FCC Rcd at 4444.

nal plan utilized a standard methodology to assign central offices in 16 study areas to three pricing zones. GTE states that because traffic densities, as well as underlying network configurations, vary significantly across GTE serving territories, it has revised its plan so that central offices will be assigned to pricing zones based upon the characteristics of each study area.[11] GTE explains that in some states a relatively small number of offices generate a substantial portion of the total traffic among all GTE central offices in those states, while in other states, traffic patterns are more widely dispersed. According to GTE, its revised plan therefore takes into account these geographic differences in traffic density that exist in each of the GTE service areas.[12] In this way, says GTE, the revised plan better reflects the cost-related characteristics of the particular study areas.G[13]

4. GTE proposes in its revised plan to use three different methodologies to assign end offices in each study area to each of the three pricing zones. The first methodology applies to California and Florida, the second to Washington, Oregon, Texas, Kentucky, and North Carolina, and the third to Illinois, Indiana, Michigan, Missouri, Ohio, Oklahoma, Pennsylvania, Virginia, Wisconsin and Hawaii. According to GTE, these three assignment methodologies are needed to reflect the operational and cost differences of its operating territories. GTE states that each methodology will apply to study areas with similar density structures.[14]

5. For the first two methodologies GTE sets zone breakpoints so that approximately 55 percent of the minutes of use (MOUs) in a GTE wire center would be assigned to zone one and approximately 22 percent of the MOUs would be assigned to each of zones two and three.[15] This method aligns offices with similar densities into the three pricing zones. In the third methodology, GTE sets the breakpoints so that approximately 33 percent of the MOUs would be assigned to each zone. Among the study areas, zone one may range from 14 percent of the MOUs to 49 percent of the MOUs.[16] This methodology is designed to establish breakpoints that will result in each zone producing approximately the same revenues.[17]

6. The Bureau received no comments on GTE's revised plan in response to the public notice establishing a pleading cycle for the plan.[18]

III. DISCUSSION

7. The Bureau used the standard of reasonableness in prior Orders approving zone density pricing plans.[19] Consistent with this standard, we evaluate GTE's request for approval of a revised zone density pricing plan in light of whether the revised plan: (1) refines the methodology used so that zone assignments more accurately reflect cost-related characteristics of the study areas served by the Local Exchange Carrier; (2) complies with the Commission's rules on zone density pricing; and (3) assigns central offices to zones in a non-discriminatory manner.[20]

8. Based on our review of the record and consideration of the criteria outlined above, we conclude that the methodologies employed by GTE to determine zone breakpoints were selected in a reasonable manner. Our conclusion here is based on our finding that GTE's revised plan reflects cost-related characteristics based on traffic density, as the Commission intended in the *Special Access Physical Collocation Order*.[21] GTE has not changed the methodology by which DS1 equivalents are determined and we approved that methodology in the *First Zone Density Order*. In addition, GTE's use of varying methodologies among study areas is acceptable under the Commission's rules.[22] Moreover, the third methodology, which attempts to equalize revenues among zones, has been approved by us in prior Orders.[23] Finally, the methodologies employed by GTE assign central offices to zones in a non-discriminatory manner, based on permissible considerations, as discussed above in this paragraph.

IV. CONCLUSION

9. We find that GTE's revised plan reasonably implements the zone density pricing scheme envisioned by the Commission in the *Special Access Physical Collocation Order*. We, therefore, approve GTE's revised plan and permit its tariff revisions to become effective, as scheduled, on May 8, 1995.

V. ORDERING CLAUSE

10. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act, 47 U.S.C. § 154(i), Section 0.91 of the Commission's Rules, 47 CFR § 0.91, and Section 0.291 of the Commission's Rules, 47 CFR § 0.291, the revised zone density pricing plan filed by GTE IS APPROVED.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen M.H. Wallman
Chief, Common Carrier Bureau

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[11] Revised Plan at 2.
[12] *Id.* at 2-3.
[13] *Id.* at 3.
[14] *Id.*
[15] Revised Plan at 3-4.
[16] Revised Plan at 4.
[17] *Id.*
[18] Common Carrier Bureau Establishes Pleading Cycle for Revised Zone Density Pricing Plan Filed by GTE, DA 94-1348 (rel. Dec. 1, 1994).
[19] *See, e.g., First Zone Density Order*, 8 FCC Rcd at 4446 (concluding that the LECs had selected their breakpoints in a reasonable manner and finding that "central office rankings often show that no clear breakpoints exist ... [and] there is often a continuum of office densities, and several breakpoints could reasonably be selected as the line between zones").
[20] While not a criterion for approval, we note that in this case GTE has not yet included zone density pricing in its tariff and therefore there will be no pricing changes due to the revisions.
[21] *Special Access Physical Collocation Order*, 7 FCC Rcd at 7454.
[22] *See* 47 C.F.R. § 69.123(a). The Commission has stated that this provision "contemplates the study area by study area implementation of zone density pricing." *First Zone Density Order*, 8 FCC Rcd at 4446.
[23] *See id.* (goal of equalizing revenues among zones found not to undermine reasonableness of breakpoints).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Comcast Cablevision of Carolina, Inc. CUID No. SC0155
City of Walterboro, South Carolina

Benchmark Filing to Justify Cable
Programming Service Rate

MEMORANDUM OPINION AND ORDER

Adopted: March 31, 1995; Released: April 6, 1995

By the Deputy Chief, Cable Services Bureau:

1. Here we consider a complaint about the price Comcast Cablevision of Carolina, Inc. ("Operator") was charging for its cable programming service ("CPS") tier in the community referenced above. Operator has chosen to attempt to justify its price through a benchmark showing on FCC Form 393. This Order addresses the reasonableness of Operator's price only through May 14, 1994. At a later time we will issue a separate order addressing the reasonableness of the price after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a complete and timely complaint. The filing of a complete and timely complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.,[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with complete and timely CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

4. Operator asserts that its monthly CPS price is justified by its benchmark filing because this price is equal to the maximum permitted charge. Upon review, we have found no apparent errors that would result in Operator's actual CPS price exceeding its maximum permitted CPS price.[11]

5. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the complaint referenced herein against the cable programming service price charged by Operator in the community referenced above IS DENIED TO THE EXTENT INDICATED HEREIN.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Deputy Chief, Cable Services Bureau

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[1] The findings in this Order do not in any way prejudge the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations. However, to the extent the operator has sought to take advantage of the refund deferral period under the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (*"Second Order on Reconsideration"*), the maximum permitted CPS price determined herein might also apply from May 15, 1994 until the date on which the operator implemented its CPS price under the new regulations. *See* para. 3, *infra*.

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992) ("1992 Cable Act"); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] Order in MM Docket No. 92-266, Implementation of Sections of the Cable Consumer Protection and Competition Act of 1992: Rate Regulation, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration*, 9 FCC Rcd at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

[11] This finding is based solely on the representations of the operator. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Comcast Cablevision of West Palm Beach, Inc. Town of Lantana, Florida — CUID No. FL0109

Benchmark Filing To Support
Cable Programming Service Price

MEMORANDUM OPINION AND ORDER

Adopted: March 31, 1995; Released: April 6, 1995

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. Here we consider a complaint about the price Comcast Cablevision of West Palm Beach, Inc. ("Comcast") was charging for its cable programming service ("CPS") tier in Lantana, Florida, CUID No. FL0109. Comcast has attempted to justify its price through a benchmark showing on FCC Form 393. This Order addresses the reasonableness of Comcast's price only through May 14, 1994. At a later time we will issue a separate order addressing the reasonableness of the price after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a valid complaint. The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with valid CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

II. PROCEDURAL MATTERS

4. The first valid CPS complaint was completed and served on Comcast on February 4, 1994. The Commission received the complaint on February 9, 1994.

5. Comcast attempted to justify its CPS price through an FCC Form 393 filed on March 10, 1994. Comcast amended its justification on June 27, 1994 in response to a Cable Services Bureau Order citing common deficiencies observed in benchmark filings generally.[11] Comcast further amended and supplemented its filings on February 7, 1995 in response to a Cable Services Bureau Public Notice offering operators the opportunity to make optional supplemental filings.[12]

III. DISCUSSION

6. In its amended benchmark filing of February 7, 1995 Comcast calculated a maximum permitted price for the CPS tier of $13.33 per month. Upon review, we have found no apparent errors that would require a recalculation of the maximum permitted price. However, Comcast's actual price for the CPS tier was $13.38 per month. Thus, Comcast has failed to demonstrate that its price for the CPS tier was not unreasonable.

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[1] The findings in this Order do not in any way prejudge the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations. However, to the extent Comcast has sought to take advantage of the refund deferral period under the *Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking*, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (1994) (*"Second Order on Reconsideration"*), the maximum permitted CPS price determined herein might also apply from May 15, 1994 until the date on which Comcast implemented its CPS price under the new regulations. See para. 3, *infra*. Further, to the extent that the price as of March 31, 1994 is found to be excessive, a reduction in Comcast's price for the period after May 14, 1994 may be required to reflect the fact that Comcast's price during the earlier period, which is used as the starting point to calculate its prices for the prospective period, was unreasonable. 47 C.F.R. §76.922(b)(4)(c).

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] *Order* in MM Docket No. 92-266, *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration* at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration* at 4189 n.195.

[11] *Cable Operators' Rate Justification Filings*, DA 94-526, 9 FCC Rcd 7752 (Cab. Serv. Bur. 1994).

[12] *Public Notice: Cable Services Bureau Announces Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases*, DA 94-1556 (Dec. 29, 1994); *see also Public Notice: Cable Services Bureau Announces Extension of Time to File Under Optional Procedures Plan with Respect to Pending Pre-May 15 Benchmark Cases*, DA 95-87 (Jan. 20, 1995).

IV. CONCLUSIONS

7. Upon review of the record herein, we conclude that Comcast's showing supports a maximum reasonable CPS tier price of $13.33 per month (plus franchise fee) for the period February 9, 1994 to May 14, 1994.[13] However, we further determine that the refund at issue is such a de minimis amount that it would not serve the public interest to order a refund.

8. We further conclude that Comcast must reflect in its FCC Form 1200 rate filing for the period after May 14, 1994 the fact that Comcast's price during the earlier period was unreasonable. We reserve the right to make further adjustments to Comcast's price for the period after May 14, 1994 upon completion of our review of Comcast's FCC Form 1200 rate filing.

9. We further conclude that Comcast has submitted in good faith a timely optional supplemental filing in response to our December 29, 1994 Public Notice.[14] As provided in the Public Notice, we will relieve Comcast of its obligation to obtain advance Commission approval of adjustments to its CPS price for one year following the release of this Order.

10. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the February 9, 1994 complaint against the cable programming service price charged by Comcast Cablevision of West Palm Beach, Inc., in Lantana, Florida, CUID No. FL0109, IS GRANTED TO THE EXTENT INDICATED HEREIN AND DENIED TO THE EXTENT INDICATED HEREIN.

11. IT IS FURTHER ORDERED that the benchmark filing submitted by Comcast Cablevision of West Palm Beach, Inc. with respect to Lantana, Florida, CUID No. FL0109, for the period of February 9, 1994 to May 14, 1994, justifies a maximum price of $13.33 per month (plus franchise fee) for the cable programming service tier.

12. IT IS FURTHER ORDERED, pursuant to Section 76.922(b)(4)(c) of the Commission's Rules, 47 C.F.R. § 76.922(b)(4)(c), that Comcast Cablevision of West Palm Beach, Inc. shall, within 30 days of the release of this Order, revise its Form 1200 filing with respect to Lantana, Florida, CUID No. FL0109, for the period beginning May 15, 1994, to reduce the monthly charge per tier as of March 31, 1994 for Tier 2 (Line A6b) to equal the maximum permitted rate (plus franchise fee).

13. IT IS FURTHER ORDERED that Comcast Cablevision of West Palm Beach, Inc. shall place into effect, within 30 days after its submission of the revised Form 1200 filing required above, a CPS tier price that reflects the reduction in the CPS rate determined in this Order.

14. IT IS FURTHER ORDERED, pursuant to Section 76.960 of the Commission's Rules, 47 C.F.R. § 76.960, that Comcast shall not be required to obtain advance Commission approval of adjustments to its CPS price for one year following the release of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Deputy Chief, Cable Services Bureau

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[13] This finding is based solely on the representations of the operator. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

[14] *Public Notice: Cable Services Bureau Announces Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases*, DA 94-1556 (Dec. 29, 1994).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Comcast Cablevision of Carolina, Inc.
City of Hanahan, South Carolina
CUID No. SC0043

Benchmark Filing To Support
Cable Programming Service Price

MEMORANDUM OPINION AND ORDER

Adopted: March 31, 1995; Released: April 6, 1995

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. Here we consider a complaint about the price Comcast Cablevision of Carolina, Inc. ("Comcast") was charging for its cable programming service ("CPS") tier in Hanahan, South Carolina, CUID No. SC0043. Comcast has attempted to justify its price through a benchmark showing on FCC Form 393. This Order addresses the reasonableness of Comcast's price only through May 14, 1994. At a later time we will issue a separate order addressing the reasonableness of the price after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a valid complaint. The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with valid CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

II. PROCEDURAL MATTERS

4. The first valid CPS complaint was completed and served on Comcast on February 14, 1994. The Commission received the complaint on February 22, 1994.

5. Comcast attempted to justify its CPS price through an FCC Form 393 filed on March 10, 1994. Comcast amended its justification on June 27, 1994 in response to a Cable Services Bureau Order citing common deficiencies observed in benchmark filings generally.[11] Comcast further amended and supplemented its filings on February 7, 1995 in response to a Cable Services Bureau Public Notice offering operators the opportunity to make optional supplemental filings.[12]

III. DISCUSSION

6. In its amended benchmark filing of February 7, 1995 Comcast calculated a maximum permitted price for the CPS tier of $17.81 per month. Upon review, we have found no apparent errors that would require a recalculation of the maximum permitted price. However, Comcast's actual price for the CPS tier was $17.82 per month. Thus, Comcast has failed to demonstrate that its price for the CPS tier was not unreasonable.

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[1] The findings in this Order do not in any way prejudge the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations. However, to the extent Comcast has sought to take advantage of the refund deferral period under the *Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking*, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (1994) (*"Second Order on Reconsideration"*), the maximum permitted CPS price determined herein might also apply from May 15, 1994 until the date on which Comcast implemented its CPS price under the new regulations. See para. 3, *infra*. Further, to the extent that the price as of March 31, 1994 is found to be excessive, a reduction in Comcast's price for the period after May 14, 1994 may be required to reflect the fact that Comcast's price during the earlier period, which is used as the starting point to calculate its prices for the prospective period, was unreasonable. 47 C.F.R. §76.922(b)(4)(c).

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] *Order* in MM Docket No. 92-266, *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration* at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration* at 4189 n.195.

[11] *Cable Operators' Rate Justification Filings*, DA 94-526, 9 FCC Rcd 7752 (Cab. Serv. Bur. 1994).

[12] *Public Notice: Cable Services Bureau Announces Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases*, DA 94-1556 (Dec. 29, 1994); *see also Public Notice: Cable Services Bureau Announces Extension of Time to File Under Optional Procedures Plan with Respect to Pending Pre-May 15 Benchmark Cases*, DA 95-87 (Jan. 20, 1995).

IV. CONCLUSIONS

7. Upon review of the record herein, we conclude that Comcast's showing supports a maximum reasonable CPS tier price of $17.81 per month (plus franchise fee) for the period February 22, 1994 to May 14, 1994.[13] However, we further determine that the refund at issue is such a de minimis amount that it would not serve the public interest to order a refund.

8. We further conclude that Comcast must reflect in its FCC Form 1200 rate filing for the period after May 14, 1994 the fact that Comcast's price during the earlier period was unreasonable. We reserve the right to make further adjustments to Comcast's prices for the period after May 14, 1994 upon completion of our review of Comcast's FCC Form 1200 rate filing.

9. We further conclude that Comcast has submitted in good faith a timely optional supplemental filing in response to our December 29, 1994 Public Notice.[14] As provided in the Public Notice, we will relieve Comcast of its obligation to obtain advance Commission approval of adjustments to its CPS price for one year following the release of this Order.

10. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the February 22, 1994 complaint against the cable programming service price charged by Comcast Cablevision of Carolina, Inc., in Hanahan, South Carolina, CUID No. SC0043, IS GRANTED TO THE EXTENT INDICATED HEREIN AND DENIED TO THE EXTENT INDICATED HEREIN.

11. IT IS FURTHER ORDERED that the benchmark filing submitted by Comcast Cablevision of Carolina, Inc. with respect to Hanahan, South Carolina, CUID No. SC0043, for the period of February 22, 1994 to May 14, 1994, justifies a maximum price of $17.81 per month (plus franchise fee) for the cable programming service tier.

12. IT IS FURTHER ORDERED, pursuant to Section 76.922(b)(4)(c) of the Commission's Rules, 47 C.F.R. § 76.922(b)(4)(c), that Comcast Cablevision of Carolina, Inc. shall, within 30 days of the release of this Order, revise its Form 1200 filing with respect to Hanahan, South Carolina, CUID No. SC0043, for the period beginning May 15, 1994, to reduce the monthly charge per tier as of March 31, 1994 for Tier 2 (Line A6b) to equal the maximum permitted rate (plus franchise fee).

13. IT IS FURTHER ORDERED that Comcast Cablevision of Carolina, Inc. shall place into effect, within 30 days after its submission of the revised Form 1200 filing required above, a CPS tier price that reflects the reduction in the CPS rate determined in this Order.

14. IT IS FURTHER ORDERED, pursuant to Section 76.960 of the Commission's Rules, 47 C.F.R. § 76.960, that Comcast shall not be required to obtain advance Commission approval of adjustments to its CPS price for one year following the release of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Deputy Chief, Cable Services Bureau

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[13] This finding is based solely on the representations of the operator. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

[14] *Public Notice: Cable Services Bureau Announces Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases*, DA 94-1556 (Dec. 29, 1994).

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 93-162

In the Matter of

Pacific Bell Transmittal No. 1780
Revisions to Tariff F.C.C. No. 128

ORDER

Adopted: April 5, 1995; Released: April 7, 1995

By the Chief, Tariff Division, Common Carrier Bureau:

1. On February 22, 1995, Pacific Bell filed Transmittal No. 1780 to revise its Tariff F.C.C. No. 128. Transmittal No. 1780, which is scheduled to become effective on April 8, 1995, would revise and clarify certain provisions for expanded interconnection service through physical collocation by prorating nonrecurring charges associated with the preparation of the wire centers to provide physical collocation. Transmittal No. 1780 would also give interconnectors 180 days, from notification that the licensed space is available for occupancy, to activate their equipment. Additionally, Transmittal No. 1780 would increase the service interval to prepare two wire centers for physical collocation. No petitions were filed against the Pacific Bell transmittal.

2. Transmittal No. 1780 raises the same issues regarding rate levels, rate structures, and terms and conditions of service as those identified in the *Physical Collocation Tariff Suspension Order*.[1] Therefore, Transmittal No. 1780 is suspended for one day, following the effective date, and will be subject to the investigation initiated in the *Expanded Interconnection Tariff Order*. These rates will also be subject to an accounting order to facilitate any refunds that may later prove necessary.

3. Accordingly, IT IS ORDERED that, pursuant to Section 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the revisions to Pacific Bell Tariff F.C.C. No. 128, Transmittal No. 1780, ARE SUSPENDED for one day and an investigation of the referenced tariff transmittal IS INSTITUTED.

4. IT IS FURTHER ORDERED that Pacific Bell SHALL FILE tariff revisions within five business days of the release date of this Order to reflect this suspension.

5. IT IS FURTHER ORDERED that, for these purposes, we waive Sections 61.56, 61.58, and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.56, 61.58, and 61.59. Pacific Bell should cite the "DA" number of the instant Order as the authority for this filing.

6. IT IS FURTHER ORDERED that, pursuant to Section 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 204(a), Pacific Bell shall keep accurate account of all amounts received by reason of the rates that are the subject of this investigation.

FEDERAL COMMUNICATIONS COMMISSION

Geraldine A. Matise
Chief, Tariff Division
Common Carrier Bureau

[1] Ameritech Operating Companies, *et. al*, Order, CC Docket No. 93-162, 8 FCC Rcd 4589 (Com. Car. Bur. 1993) (*Physical Collocation Tariff Suspension Order*).

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: April 17, 1995

PLEADING CYCLE ESTABLISHED FOR COMMENTS ON AMERITECH'S UPDATE TO ITS PETITION FOR DECLARATORY RULING AND RELATED WAIVERS TO ESTABLISH A NEW REGULATORY MODEL FOR THE AMERITECH REGION

On March 1, 1993, Ameritech filed a petition entitled "Customers First: Ameritech's Advanced Universal Access Plan" (Plan) seeking a declaratory ruling and related waivers to establish a new regulatory model that proposes to restructure the way Ameritech interconnects with competitors' networks. On April 12, 1994, Ameritech filed an update to its initial petition, providing additional details and updated information on competitive developments in its region. In addition, Ameritech narrows the scope of its request by seeking permission to implement the waivers only in those study areas in which the local components of the Plan have been implemented -- currently Illinois and Michigan. Ameritech proposes to implement the requested waivers in other study areas as those areas meet the conditions of the Plan.

Ameritech seeks waivers of the Commission's rules in order to (1) permit subsidies to be recovered outside of access rates through a "competitively neutral recovery mechanism," (2) remove from price caps and streamline regulation of Ameritech's transport and switching services and current interexchange service offerings, and (3) permit the introduction of non-mandatory new services on 14 days' notice, without cost support or Part 69 waivers.

Interested parties should file comments on the updated petition by **May 16, 1995**, and reply comments by **May 31, 1995**, with the Secretary, FCC, 1919 M Street, N.W., Washington, D.C. 20554. Three copies should also be sent to Peggy Reitzel, Common Carrier Bureau, FCC, Room 544, 1919 M Street, N.W., Washington, D.C. 20554. An additional copy should be sent to the Commission's contractor for public service records duplication: ITS, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Copies of the updated petition can be obtained from ITS at (202) 857-3800.

We will continue to treat this proceeding as non-restricted for purposes of the Commission's *ex parte* rules. *See generally* 47 C.F.R. §§ 1.1200-1.1216. For further information contact Peggy Reitzel, Policy and Program Planning Division of the Common Carrier Bureau, at (202) 418-1579.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Citizens Telecommunications Companies

Petition for Waiver of the
Commission's Rules to Establish
500 Access Service

MEMORANDUM OPINION AND ORDER

Adopted: April 20, 1995; Released: April 21, 1995

By the Deputy Chief, Tariff Division, Common Carrier Bureau:

I. INTRODUCTION

1. In the summer of 1994, 12 local exchange carriers (LECs) filed petitions for waiver of Part 69 of the Commission's Rules, 47 C.F.R. Part 69, to establish one or more new rate elements for 500 access service.[1] The Common Carrier Bureau (Bureau) granted those 12 waiver petitions on November 30, 1994.[2] On March 13, 1995, Citizens Telecommunications Companies (Citizens) sought waiver of Sections 69.4(b) and 69.106 of the Commission's Rules to establish 500 access service.[3] No oppositions were filed in response to Citizens' waiver petition. For the reasons discussed below, we grant Citizens' waiver request.[4]

II. BACKGROUND AND SUMMARY OF PETITION

2. LECs provide access to their local exchange networks to customers providing 500 service to end users. 500 service is a new "follow me" personal communications service which enables customers, *inter alia*, to instruct their 500 service providers where to route their calls, whether to landline or cellular telephones, pagers, or to a voice messaging service.[5] In providing 500 access service, the LECs must screen the first six digits of the ten digit 500 number (*i.e.*, 500-NXX), in order to identify and route calls to the subscriber's designated 500 service provider.[6] There are two ways that a LEC can perform this six-digit screening and routing. First, the carrier can use switch-based translation, in which it deploys a translation table contained in the software of the LEC switches located at either the end office or the access tandem to route the call to the subscriber's 500 service provider.[7] Alternatively, if the LEC's end office or access tandem has Advanced Intelligent Network (AIN) capability, the LEC launches a query to a centralized AIN database to identify the 500 service provider and routing.[8]

3. The Bureau did not impose a uniform rate structure for 500 access service on the LECs. It concluded that such a uniform rate structure would force some carriers into rate structures unrelated to the way they incur costs and might have delayed the availability of 500 service.[9] Accordingly, LECs were granted waivers to establish rate structures to recover the costs of providing 500 access service consistently with the way they incur those costs. Specifically, LECs planning to use switched-based translation were granted waivers to establish one or more non-recurring charges for 500 access service.[10] LECs planning top use AIN-based translation were permitted to establish recurring charges for their 500 access service, in addition to a small nonrecurring charge.[11] Similarly, LECs intending to use switch-based translation initially, but expecting to convert to AIN sometime in 1995, were granted waivers to establish recurring charges.[12] Finally, the Bureau declined to grant a blanket waiver, but stated that other LECs seeking a waiver that matched any of the waivers granted in the 500 Access Waiver Order would warrant "expedited consideration."[13]

4. Citizens describes its 500 access service as a new offering which will allow customers to provide their end users with services that use a 500 Service Access Code (SAC).[14] Citizens states that its service will utilize trunk side switched access and will be available in all digital end offices or access tandems in Citizens' serving areas.[15] According to Citizens, the 500 service provider on any given call will be determined through switch allocation tables.[16] Under this switch allocation methodology, says Citizens,

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[1] Ameritech Operating Companies, *et al.*, Petitions for Waiver of Sections 69.4(b) and 69.106 of Part 69 of the Commission's Rules, Order, 9 FCC Rcd 7873 (Com. Car. Bur., 1994) (*500 Access Waiver Order).*

[2] *Id.*

[3] Section 69.4, entitled "Charges to be Filed," lists the various rates elements that a LEC must file with the Commission. Section 69.106, entitled "Local Switching," describes the requirements for this rate element of switched access service.

[4] On March 14, 1995, Citizens filed Transmittal No. 19 to provide 500 access service. Citizens' tariff transmittal is unopposed. Generally, any tariff filing which would establish rate elements inconsistent with Part 69 is patently unlawful and, therefore, subject to rejection unless and until a petition for waiver has been granted. *See,* US West Communications, Inc., Revisions to Tariff F.C.C. No. 5, Order, 9 FCC Rcd 5228 (Com. Car. Bur. 1994). In this case, however, the Bureau has specifically permitted LECs to file their 500 service-related waiver requests and tariffs simultaneously. *500 Access Waiver Order,* 9 FCC Rcd 7878-79 (para. 31). Accordingly, we will not reject Transmittal No. 19 on this basis.

[5] *Id.* at 7873 (paras. 2-3).

[6] Id. at 7873 (para. 3). The 500 service provider, using database technology, will then route the call to the phone or other device designated by the 500 service subscriber. Id.

[7] Id. at 7873 (para. 4).

[8] *Id.*

[9] Id. at 7878 (para. 27).

[10] Id. at 7878 (para. 29).

[11] *Id.* at 7878 (para. 28).

[12] Id. at 7878 (para. 30).

[13] Id.at 7878-79 (para. 31).

[14] Citizens Waiver Petition at 1. A service access code is assigned for access to special services. The most widely recognized are 800 and 900 services. *See* The Use of N11 Codes and Other 92-105 Abbreviated Dialing Arrangements, Notice of Proposed Rulemaking, 7 FCC Rcd 3004 (para. 6) (1992).

[15] Citizens Waiver Petition at 1-2.

[16] *Id.*

switches located in technically capable end offices within the serving area or within a local access transport area (LATA) associated with the serving area must be updated whenever a carrier requests the activation or deactivation of a 500 NXX code from a Citizens Telecommunications Company.[17]

5. Citizens states that it plans to establish a nonrecurring charge (NRC) to recover the costs incurred in performing switch-based translations to activate NXXs for use within the non-geographic 500 SAC.[18] According to Citizens, this NRC will be incurred whenever a 500 NXX is activated or deactivated.[19] Citizens further states that existing switched access usage rates will apply to its 500 access service.[20] Finally, Citizens asserts that the proposed rate structure in its waiver request closely matches that of Ameritech and other LECs granted waivers in the *500 Access Order*.[21] Thus, Citizens contends, there is "good cause" for a waiver of Part 69 of the Commission's Rules because the Bureau has recently granted similar waivers to facilitate the implementation of 500 access service by other LECs.[22]

III. DISCUSSION

6. The Commission may exercise its discretion to waive a rule where there is "good cause" to do so,[23] because the particular facts would make strict compliance inconsistent with the public interest.[24] Further, the Commission's grant of a waiver must be based on articulated, reasonable standards that are predictable, workable, and not susceptible to discriminatory application.[25] We conclude that the waiver Citizens seeks here is substantially similar to the waivers granted in the 500 Access Waiver Order to establish nonrecurring charges for 500 access service.[26] In particular, we find that the rate structure proposed by Citizens is similar to those proposed by the Ameritech Operating Companies and Cincinnati Bell Telephone Company, for which waivers have been granted.[27] We thus conclude that Citizens has shown good cause for a waiver of Sections 69.4 and 69.106 of the Commission's Rules.

IV. ORDERING CLAUSE

7. Accordingly, IT IS ORDERED that the petition for waiver filed by Citizens Telecommunications Companies is GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

David A. Nall
Deputy Chief, Tariff Division
Common Carrier Bureau

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17 Id.
18 Id.
19 Id.
20 Id.
21 *Id.* at 2-3, *citing 500 Access Order.*
22 Id.
23 See Section 1.3 of the Commission's Rules, 47 C.F.R. §1.3.
24 WAIT Radio v. F.C.C., 418 F.2d 1153, 1159 (D.C. Cir. 1969).
25 Northeast Cellular Telephone Co. v. F.C.C., 897 F.2d 1164, 1166 (D.C. Cir. 1990).
26 See 500 Access Waiver Order, 9 FCC Rcd at 7878 (para. 28).
27 *Id.* at 7874 (para. 7).

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: April 25, 1995

PLEADING CYCLE ESTABLISHED
FOR COMMENTS ON
US WEST'S SECOND AMENDMENT
AND
REQUEST FOR MODIFICATION

FILE NO. W-P-C-6868

On April 19, 1995, US West filed a second amendment to its Section 214 Application to conduct technical and market trials of video dialtone service in portions of its Omaha, Nebraska service area, requesting that the Commission modify its authorization. The Commission initially granted US West authorization to conduct a video dialtone trial in Omaha pursuant to certain conditions. (*See Order and Authorization*, 9 FCC Rcd 184 (1993); *Order and Authorization*, W-P-C-6868, FCC 94-350 (rel. Jan. 6, 1995)).

US West seeks to amend its authorization to provide video programming directly to subscribers during the remainder of the Omaha video dialtone trial. US West notes that the Commission has been enjoined from enforcing against US West the cable television/telephone company cross-ownership rules that implement the statutory ban on cross-ownership.

Interested parties are invited to file comments on US West's second amendment. Comments should be filed by **May 25, 1995**, with the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Three copies should also be sent to Peggy Reitzel, Common Carrier Bureau, FCC, Room 544, 1919 M Street, N.W., Washington, D.C. 20554, and to the Commission's contractor for public service records duplication: ITS, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Copies of the second amendment can be obtained from ITS at (202) 857-3800. The second amendment is available for review and photocopying at the FCC Public Reference Room, 6th Floor, 2025 M Street, N.W., Washington, D.C., from 8:30 -12:30 and 1:30 -3:00 , Monday through Thursday.

We will continue to treat this proceeding as non-restricted for purposes of the Commission's *ex parte* rules. *See generally* 47 C.F.R. §§ 1.1200-1.1216. For further information contact Peggy Reitzel, Policy and Program Planning Division of the Common Carrier Bureau, at (202) 418-1579.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION

Geraldine A. Matise
Chief, Tariff Division
Common Carrier Bureau

CC Docket No. 93-162

In the Matter of

Pacific Bell Transmittal No. 1784
Revisions to Tariff F.C.C. No. 128

ORDER

Adopted: April 25, 1995; Released: April 27, 1995

By the Chief, Tariff Division, Common Carrier Bureau:

1. On March 17, 1995, Pacific Bell filed Transmittal No. 1784 to revise its Tariff F.C.C. No. 128. Transmittal No. 1784, which is scheduled to become effective on May 1, 1995, would revise certain rates for physical collocation in three wire centers: FRMTCA12, ORNGCA14, and SNJSCA21. The proposed rate increases result from Pacific Bell designating a different part of the three wire centers for physical collocation than was originally planned. No petitions were filed against the Pacific Bell transmittal.

2. Transmittal No. 1784 raises the same issues regarding rate levels, rate structures, and terms and conditions of service as those identified in the *Physical Collocation Tariff Suspension Order*.[1] Therefore, Transmittal No. 1784 is suspended for one day, following the effective date, and will be subject to the investigation initiated in the *Physical Collocation Tariff Suspension Order*. These rates will also be subject to an accounting order to facilitate any refunds that may later prove necessary.

3. Accordingly, IT IS ORDERED that, pursuant to Section 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the revisions to Pacific Bell Tariff F.C.C. No. 128, Transmittal No. 1784, ARE SUSPENDED for one day and an investigation of the referenced tariff transmittal IS INSTITUTED.

4. IT IS FURTHER ORDERED that Pacific Bell SHALL FILE tariff revisions within five business days of the release date of this Order to reflect this suspension.

5. IT IS FURTHER ORDERED that, for these purposes, we waive Sections 61.56, 61.58 and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.56, 61.58, and 61.59. Pacific Bell should cite the "DA" number of the instant Order as the authority for this filing.

6. IT IS FURTHER ORDERED that, pursuant to Section 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 204(a), Pacific Bell shall keep accurate account of all amounts received by reason of the rates that are the subject of this investigation.

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[1] Ameritech Operating Companies, *et. al.*, CC Docket No. 93-162, Order, 8 FCC Rcd 4589 (1993) (*Physical Collocation Tariff Suspension Order*).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

United Telephone Company of Florida
and
Central Telephone Company of Florida

Revised Zone Density Pricing Plan

ORDER

Adopted: May 1, 1995; Released: May 2, 1995

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. In this Order, the Common Carrier Bureau (Bureau) approves the revised zone density pricing plan filed jointly by United Telephone Company of Florida (United) and Central Telephone Company of Florida (Central). As discussed below, we find that the revised plan reasonably implements the zone density pricing authorized by the Commission in the *Virtual Collocation Order* .[1] Accordingly, the tariff revisions filed by United and Central under Transmittal No. 33 may become effective, as scheduled, on May 3, 1995.[2]

II. BACKGROUND

A. Commission Requirements

2. In the *Special Access Physical Collocation Order,* the Commission granted all Tier 1 local exchange carriers (LECs) [3] implementing special access expanded interconnection arrangements additional pricing flexibility in order to bring their special access rates more in line with their costs.[4] To implement this additional pricing flexibility, the Commission permitted each affected LEC to establish, subject to Commission approval, zones within each study area and required each central office in that study area to be assigned to one of the zones. Once plans were approved, LECs could then file tariffs establishing different rates in each zone. The Commission required the LECs to show they assigned each central office to a zone using criteria reflecting cost-related characteristics, such as the amount of traffic that passes through a central office. Geographic contiguity could, under certain conditions, be a secondary, less important consideration.[5] In the *Switched Transport Physical Collocation Order,* the Commission directed the LECs to use the same zone definitions for switched transport and special access.[6] The Bureau has previously approved zone density pricing plans filed by a number of LECs, including United and Central.[7]

B. The Revised Zone Density Plan

3. United and Central originally filed their individual zone density pricing plans for special access on February 16, 1993.[8] Those plans were approved by the Bureau on August 4, 1993.[9] United and Central have since merged. United and Central therefore submitted a revised zone density pricing plan (Revised Plan) on January 17, 1995. As of this date, United and Central have not yet included zone pricing in their access tariffs. United and Central propose to combine their individual zone density pricing plans for two Florida jurisdictions under a single plan for the State of Florida and to extend the revised plan to switched transport service.[10] In the revised plan, United

[1] Expanded Interconnection with Local Telephone Company Facilities, Report and Order and Notice of Proposed Rulemaking, Memorandum Opinion and Order, 9 FCC Rcd 5154 (1994) (*Virtual Collocation Order), aff'g in part* 7 FCC Rcd 7369 (1992) (*Special Access Physical Collocation Order), recon.,* 8 FCC Rcd 127 (1992), *vacated in part and remanded sub nom. Bell Atlantic Corp. v. FCC,* 24 F.3d 1441 (D.C. Cir. 1994); Second Memorandum Opinion and Order on Reconsideration, 8 FCC Rcd 7341 (1993) (*First Reconsideration Order);* Second Report and Order and Third Notice of Proposed Rulemaking, 8 FCC Rcd 7374 (1993) (*Switched Transport Physical Collocation Order).* While the U.S. Court of Appeals for the District of Columbia Circuit vacated the *Special Access Physical Collocation Order* insofar as it required pyhsical collocation for special access services, the zone density pricing portion of that Order was reaffirmed in the *Virtual Collocation Order.*

[2] United and Central filed the tariff revisions on March 3, 1995 with Transmittal No. 33, scheduled to become effective April 3, 1995. The Tariff Division ordered United and Central to defer the effective date until May 3, 1995.

[3] Tier 1 LECs are companies having annual revenues from regulated telecommunications operations of $100 million or more for a sustained period of time. *See* Commission Requirements for Cost Support Material To Be Filed With 1990 Annual Access Tariffs, Order, 5 FCC Rcd 1364 (Com. Car. Bur. 1990).

[4] *See Special Access Physical Collocation Order,* 7 FCC Rcd at 7373, 7454.

[5] *See* Section 61.38(b)(4) of the Commission's Rules, 47 C.F.R. § 61.38(b)(4); *see also Special Access Physical Collocation Order,* 7 FCC Rcd at 7455 and n.415.

[6] *Switched Transport Physical Collocation Order,* 8 FCC Rcd at 7428-29.

[7] *See* BellSouth Telecommunications, Inc., GTE Service Corporation, Lincoln Telephone and Telegraph Co., NYNEX Telephone Companies, Pacific Bell, and Rochester Telephone Corporation Zone Density Pricing Plans, 8 FCC Rcd 4443 (Com. Car. Bur. 1993) (*First Zone Density Order); see also* Bell Atlantic Telephone Companies, Centel Telephone Company, Southwestern Bell Telephone Company, United Telephone Companies Zone Density Pricing Plans, 8 FCC Rcd 5529 (Com. Car. Bur. 1993) (*Zone Density Order);* Ameritech Operating Companies, 8 FCC Rcd 5529 (Com. Car. Bur. 1993); US West Communications and Southern New England Telephone Company Zone Density Pricing Plans, 8 FCC Rcd 7267 (Com. Car. Bur. 1993).

[8] On March 12, 1993, United and Central submitted additional supporting information requested by the Bureau. After further examination of the plans, the Bureau requested, and received, clarification from United and Central.

[9] *See Zone Density Order,* 8 FCC Rcd 5529 (1993).

[10] Revised Plan at 2.

and Central do not change the manner in which they measure the traffic density through each of its wire centers.[11] Rather, United and Central state that the revised plan changes the zone classification breakpoints pursuant to which central offices are assigned to zones.[12]

4. United and Central state that the proposal to combine zone plans is part of its effort to reconcile rate structure differences in territories where United and Central companies exist in common. United and Central explain that the revised plan was submitted concurrently with Transmittal No. 30, which geographically aggregates the access service rates applicable to customers served by the two companies in the State of Florida. United and Central assert that as a result of the aggregation, rate level distinctions between United and Central in Florida will be eliminated. United and Central claim that combining the individual zone plans previously approved by the Commission is consistent with the geographic aggregation of their rates for other access services.[13] United and Central further contend that the methodology used to classify offices into zones for the combined Florida zone density pricing plan is identical to that used in developing the individual plans previously approved by the Commission.[14] Both of the original plans rank the offices in terms of demand and subdivide them into three zones based on that demand.[15] United and Central state that they have adhered to standardized zones broadly reflective of the demand and cost characteristics of their transport routes.[16]

5. The Bureau has received no comments on the revised plan of United and Central in response to the public notice establishing a pleading cycle for the plan.[17]

III. DISCUSSION

6. The Bureau used the standard of reasonableness in prior Orders approving zone density plans.[18] Consistent with this standard, we evaluate United and Central's request for approval of a revised zone density pricing plan in light of whether the revised plan: (1) refines the methodology used so that zone assignments more accurately reflect cost-related characteristics of the study areas served; (2) complies with the Commission's Rules regarding zone density pricing plans; and (3) assigns central offices to zones in a non-discriminatory manner.[19]

7. Based on our review, we conclude that the methodology employed by United and Central to determine zone breakpoints was selected in a reasonable manner. Our conclusion here is based on our finding that the revised plan reflects cost-related characteristics based on traffic density, as the Commission intended in the *Special Access Physical Collocation Order* and the *Switched Transport Physical Collocation Order*.[20] United and Central have not changed the methodology by which DS1 equivalents are determined. In addition, the methodology employed by United and Central assigns central offices to zones in a non-discriminatory manner, based on permissible considerations such as traffic density.

IV. CONCLUSION

8. We find that the revised plan filed by United and Central reasonably implements the zone density pricing scheme envisioned by the Commission in the *Special Access Physical Collocation Order* and the *Switched Transport Physical Collocation Order*. We, therefore, approve United and Central's revised plan and permit their tariff revisions to become effective, as scheduled, on May 3, 1995.

V. ORDERING CLAUSE

9. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act, 47 U.S.C. § 154(i), Section 0.91 of the Commission's Rules, 47 CFR § 0.91, and Section 0.291 of the Commission's Rules, 47 CFR § 0.291, the revised zone density pricing plan filed by United and Central IS APPROVED.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen M.H. Wallman
Chief, Common Carrier Bureau

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[11] The revised plan uses the same measure of traffic density for each of United's and Central's serving wire centers as the original zone density pricing plans. This measure is determined by first converting switched and special access traffic into equivalent DS1s and then ranking the offices from zone one to zone three, with zone one having the highest traffic density and zone three the lowest. *See Zone Density Order*, 8 FCC Rcd 5529 (1993).

[12] Revised Plan at 3.

[13] *Id.* at 2.

[14] *Id.*

[15] *See Zone Density Order*, 8 FCC Rcd 5529 (1993).

[16] *See* United's original plan at 4; Central's original plan at iii-iv.

[17] Common Carrier Bureau Establishes Pleading Cycle for Revised Zone Density Pricing Plan Filed by United and Central, DA 95-19 (rel. Feb. 9, 1995).

[18] *See, e.g., First Zone Density Order*, 8 FCC Rcd at 4446 (concluding that the LECs had selected their breakpoints in a reasonable manner and finding that "central office rankings often show that no clear breakpoints exist ... [and] there is often a continuum of office densities, and several breakpoints could reasonably be selected as the line between zones").

[19] While not a criterion for approval, we note that in this case United and Central have not yet included zone density pricing in their access tariffs and therefore there will be no pricing changes due to the revisions.

[20] *Special Access Physical Collocation Order*, 7 FCC Rcd 7369 (1992); *Switched Transport Physical Collocation Order*, 8 FCC Rcd 7374 (1993).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Ventura County Cablevision — CUID No. CA0313, Moorpark, CA

Benchmark Filing to Support
Cable Programming Service Price

MEMORANDUM OPINION AND ORDER

Adopted: March 31, 1995; Released: April 6, 1995

By the Deputy Chief, Cable Services Bureau:

1. Here we consider a complaint about the price Ventura County Cablevision ("Operator") was charging for its cable programming service ("CPS") tier in the community designated above. Operator has chosen to attempt to justify its price through a benchmark showing on FCC Form 393. This Order addresses the reasonableness of Operator's price only through May 14, 1994. At a later date we will issue a separate order addressing the reasonableness of the price after that date.[1]

2. Under the Cable Television Consumer Protection andCompetition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a valid complaint. The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994. [7] Operators with valid CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

4. The first valid CPS complaint in the franchise area which is the subject of this Order was completed and served on Operator and received by the Commission on the date set forth on Appendix A. Operator filed an FCC Form 393 submission in response to this rate complaint; Operator has also filed amended and supplemental Form 393 filings, most recently on February 7, 1995.[11]

5. On March 28, 1994, Operator filed a motion to dismiss this complaint because the complainant failed to list the channels included in the CPS tier or otherwise describe the cable programming service at issue. Complainant filed its complaint on a revised FCC Form 329, released by the Commission in January 1994, that does not require an itemization of the channels in the CPS tier. Operator argues that the revised FCC Form 329 is deficient because it does not request "a description of the cable programming service or associated equipment involved and, if applicable, how the service or associated equipment has changed."[12] Operator's argument does not persuade us that the complaint is invalid or should be dismissed. The Commission revised Form 329 because experience had shown that the prior Form 329 requested unnecessary information and was confusing to many complainants. Form 329 was therefore revised consistent with the congressional mandate to avoid imposing unnecessarily "technical or complicated" plead-

[1] The findings in this Order do not in any way prejudge the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations. However, to the extent Operator has sought to take advantage of the refund deferral period under the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (1994) (*"Second Order on Reconsideration"),* the maximum permitted CPS price determined herein might also apply from May 15, 1994 until the date on which Operator implemented its CPS price under the new regulations. *See* para. 3, *infra.* Further, to the extent that the prices as of March 31, 1994 is found to be excessive, a reduction in Operator's price for the period after May 14, 1994 may be required to reflect the fact that Operator's price during the earlier period, which is used as the starting point to calculate its prices for the prospective period, was unreasonable. *See* 47 C.F.R. § 76.922(b)(4)(C).

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(c), *as amended,* 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] Order in MM Docket No. 92-266, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration,* 9 FCC Rcd at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration,* 9 FCC Rcd at 4189, n.195.

[11] For example, Operator filed an amended FCC Form 393 in response to a Cable Services Bureau Order citing common deficiencies observed in benchmark filings generally. Cable Operators' Rate Justification Filings, 9 FCC Rcd 7752 (Cab. Serv. Bur. 1994). Operator submitted additional information in response to a Cable Services Bureau Public Notice offering operators the opportunity to make optional supplemental filings. Public Notice: Cable Services Bureau Announces Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases, DA 94-1556 (Dec. 29, 1994) and Public Notice: Cable Services Bureau Announces Extension of Time to File Under Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases, DA 95-87 (Jan. 20, 1995) (together, *Public Notice).*

[12] 47 C.F.R. § 76.951(b)(6).

ing requirements on complainants.[13] In general, we will find valid any complaint that states a claim on which relief can be granted and provides adequate information to allow us to process the complaint. This complaint taken as a whole clearly relates to Operator's price for the CPS tier. We therefore find the complaint valid and deny Operator's motion to dismiss.

6. Operator asserts that its monthly CPS tier price is justified by its benchmark filing because its price is lower than or equal to the maximum permitted charge as calculated in the filing. Upon review of Operator's Form 393 filing, we have found that it has not correctly calculated its maximum permitted price, and it is therefore appropriate to make the following adjustments to Operator's calculations in Form 393:

a. In Line 3 of Step A of Part III of its FCC Form 393, Operator did not correctly calculate its customer equipment and installation costs using the percentage of total maintenance and installation costs stated on Line 2. We therefore adjusted Line 3 to equal the percentage stated on Line 2 of the total costs entered on Line 1, and adjusted subsequent steps accordingly.

b. In response to the Commission's rate regulations, on September 1, 1993, Operator restructured its rates. This restructuring, however, is not reflected on Line 101 of Worksheet 1 of Part I I of Operator's FCC Form 393. Instead of entering its currently effective tier prices, as required by the directions for Line 101, Operator entered its previously effective tier prices.[14] Accordingly, Worksheet 1 was adjusted to reflect current tier charge information.

c. Operator's Form 393, Worksheet 1, Line 104 entry does not represent its current monthly equipment revenue as of the initial date of regulation. Since Operator restructured its rates, including its equipment rates, on September 1, 1993, in an attempt to comply with the Commission's regulations, the monthly equipment cost figure it entered on Line 34 of Step G of Part III should have been close or identical to its Line 104 entry.[15] However, Operator's entry on Line 104 differed substantially from its entry on Line 34. We therefore adjusted Line 104 to equal the amount entered on Line 34, as adjusted pursuant to paragraph 5a, *supra*.

7. Because of these errors, we conclude that Operator has failed to demonstrate that its price for the CPS tier was not unreasonable. We will therefore set a price for this tier, incorporating the adjustments discussed above. In doing so, we must also recalculate the Inflation Adjustment Factor in Form 393, Part II, Worksheet 1, on the basis of the most accurate data currently available for the date for which Operator filed.[16] On its Form 393, Operator entered 17 months on Line 124, indicating that it calculated the Inflation Adjustment Factor through February 1994. On July 29, 1994, the U.S. Department of Commerce released corrected inflation data including Gross National Product Price Index (GNP-PI) figures of 122.3 for the third quarter of 1992 and 126.5 for the fourth quarter of 1993. Using these GNP-PI figures, we calculate an Inflation Adjustment Factor through February 1994, the base date Operator used in justifying its rates, of 1.039.

8. Upon review of the record herein, and having incorporated the adjustments discussed above, we conclude that Operator's showing supports the maximum reasonable CPS tier price shown on Appendix B (plus franchise fee) for the period from the filing of the earliest complaint (as set forth in Appendix A) to May 14, 1994.[17] However, we further determine that the refund at issue is such a de minimis amount that it would not serve the public interest to order a refund.

9. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that the complaint referred to in Appendix A against the cable programming service price charged by Operator in the area referenced above and at Appendix A herein IS GRANTED TO THE EXTENT INDICATED HEREIN AND DENIED TO THE EXTENT INDICATED HEREIN.

10. IT IS FURTHER ORDERED that the benchmark filing submitted by Operator justifies the maximum reasonable price set forth in Appendix B (plus franchise fee) for Operator's cable programming service tier.

11. IT IS FURTHER ORDERED, pursuant to Section 76.922(b)(4)(C) of the Commission's rules, 47 C.F.R. § 76.922(b)(4)(C), that Operator shall, within 30 days of the release of this Order, revise its Form 1200 filing with respect to the community listed herein, for the period beginning May 15, 1994, to reduce the monthly charge per tier as of March 31, 1994 for Tier 2 (Line A6b) to equal the maximum price set forth in Appendix B (plus franchise fee).[18]

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[13] *See* H.R. Conf. Rep. No. 862, 102d Cong., 2d Sess. at 64 (1992); *see also* Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 93-177, 8 FCC Rcd 5631, 5843-44, para. 339 (1993).

[14] The instructions for Line 101 of FCC Form 393 state: "In the relevant column, enter your *current* monthly charge for your basic service tier and for each tier of cable programming service that you offer to subscribers in the community unit for which the form is being completed." (emphasis added) (footnote omitted).

[15] *See* Questions and Answers on Completion of FCC Form 393 and Associated Filing Requirements, Question and Answer No. 7 (released Nov. 10, 1993) ("Where operators have restructured equipment rates as of September 1, 1993 in accordance with our regulations . . . operators will enter on Line 104 the same, or nearly the same, number as on Line 301.").

[16] *See* 47 C.F.R. § 76.922(b)(9)(iii)(if a cable operator fails to justify its rates, rates must be adjusted in accordance with the most accurate data available at the time of analysis).

[17] This finding is based solely on the representations of Operator and the modifications described herein. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

[18] We reserve the right to make further adjustments to Operator's price for the period after May 14, 1994, upon completion of our review of Operator's Form 1200 filing.

12. IT IS FURTHER ORDERED that Operator shall place into effect, within 30 days after its submission of the revised Form 1200 filing required above, a price that reflects the reduction in the CPS rate determined in this Order.

13. IT IS FURTHER ORDERED, pursuant to Section 76.960 of the Commission's rules, 47 C.F.R. § 76.960, that Operator shall not be required to obtain advance approval of adjustments to its CPS price in the franchise area addressed herein for one year following the release of this Order, due to Operator's having submitted in good faith an optional supplemental filing in response to our *Public Notice*.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Deputy Chief, Cable Services Bureau

Appendix A

CUID No.	Date First Complaint Filed with FCC	Date Complaint Served
CA0313	2/25/94	2/25/94

Appendix B

CUID No.	Actual Rates	Maximum Permitted Rates
CA0313	$9.05	$8.93

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Cox Cable University City, Inc. CUID No. FL0340
Alachua County, Florida

Benchmark Filing To Support
Cable Programming Service Price

MEMORANDUM OPINION AND ORDER

Adopted: March 31, 1995; Released: April 6, 1995

By the Chief, Cable Services Bureau:

I. INTRODUCTION

1. Here we consider complaints about the price Cox Cable University City, Inc. ("Operator") was charging for its cable programming service ("CPS") tier in its Alachua County, Florida franchise area, CUID No. FL0340. The Operator has chosen to attempt to justify its price through a benchmark showing on FCC Form 393. This Order addresses the reasonableness of the Operator's price only through May 14, 1994. At a later time we will issue a separate order addressing the reasonableness of the price after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a complete and timely complaint. The filing of a complete and timely complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with complete and timely CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

II. PROCEDURAL MATTERS

4. A complete and timely CPS complaint was completed and served on Operator for CUID No. FL0340 on February 25, 1994. It was received by the Commission on February 28, 1994.[11]

5. Operator filed a Form 393 with the Commission on November 30, 1993. The Operator submitted additional information on February 7, 1995 in response to a Cable Services Bureau Public Notice offering operators the opportunity to make optional supplemental filings.[12]

III. DISCUSSION

6. Operator's monthly CPS price of $12.85 is higher than the maximum permitted price of $12.37 as calculated in its February 7, 1995 filing. Thus, Operator has failed to demonstrate that the actual charge for its CPS tier was at or below the maximum permitted rate. Furthermore, upon review we have determined that Operator has not correctly calculated its maximum permitted price, and it is therefore

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[1] The findings in this Order do not in any way prejudge the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations. However, to the extent the cable operator has sought to take advantage of the refund deferral period under the *Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking*, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (*"Second Order on Reconsideration"*), the maximum permitted CPS price determined herein might also apply from May 15, 1994 until the date on which the cable operator implemented its CPS price under the new regulations. *See* para. 3, *infra*. Furthermore, to the extent that the price for the period ending May 14, 1994 is found to be excessive, reductions in the cable operator's price for the period after May 14, 1994 may be required to reflect the fact that the cable operator's price during the earlier period, which is used as the starting point to calculate its price for the prospective period, was unreasonable. *See* 47 C.F.R. § 76.922(b)(4)(C).

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992) ("1992 Cable Act"); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] *Order* in MM Docket No. 92-266, *Implementation of Sections of the Cable Consumer Protection and Competition Act of 1992: Rate Regulation*, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration*, 9 FCC Rcd at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

[11] Cox Cable did not comply with 47 C.F.R. § 76.956(a), which requires it to state when the complaint was served upon it. Under these circumstances, we will consider the mailing date provided by the complainant as the service date.

[12] Public Notice: Cable Services Bureau Announces Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases, DA 94-1556 (Dec. 29, 1994) and Public Notice: Cable Services Bureau Announces Extension of Time to File Under Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases, DA 95-87 (Jan. 20, 1995) (together, *Public Notice*).

appropriate to make the following adjustments to its calculations in Form 393 in addition to those already made by Operator in its February 7, 1995 filing:

a. In Column G of Schedules A and C of Part III of its FCC Form 393, Operator did not correctly account for income tax expense. By placing entries in these columns, Operator confirms that it is a tax-paying entity (i.e., a subchapter "C" corporation). However, Operator incorrectly calculated its income tax by simply applying the corporate tax rate to its return on investment. The Commission has stated that tax-paying business entities must gross-up their tax entries in Column G of Schedules A and C (i.e., calculate the tax as a percentage of return on investmentplus tax).[13] By understating its tax entries in Column G, an operator reduces its effective rate of return on equipment and installations and thereby could increase its CPS price. We therefore recalculate Column G of Schedules A and C (and subsequent steps) using correctly grossed-up entries.

b. Since Operator restructured its rates, including its equipment rates, on September 1, 1993, the current monthly equipment revenue figure it entered in Part II, Worksheet 1, Line 104 should have been close or identical to its equipment cost figure on Part III, Step G, Line 34.[14] However, Operator's entries on these two lines were substantially different. Accordingly, on Line 104 we enter $129,379.83, the same figure that appears on Line 34, as adjusted pursuant to paragraph 6a, *supra*.

c. Operator incorrectly calculated its benchmark rate as of the initial date of regulation on Form 393, Part II, Worksheet 1, Line 121. The instructions to Form 393 permit an Operator to calculate its benchmark channel rate using either the benchmark formula or the benchmark tables. However, the benchmark figure that Operator entered on Line 121 does not agree with the numbers of regulated channels, satellite channels, and subscribers reported by Operator using either method. Accordingly, we changed Line 121 to .666, the figure yielded by the benchmark formula using the information that Operator reported.

d. Because Operator has failed to demonstrate that its price for the CPS tier was not unreasonable, we will set a price for this tier, incorporating the adjustments discussed above. In doing so, we must also recalculate the Inflation Adjustment Factor in Form 393, Part II, Worksheet 1. On its Form 393, Operator calculated the Inflation Adjustment Factor using data it relied upon when it set its $12.85 CPS price. If based on this data Form 393 indicated that Operator's price was reasonable, then Operator would have successfully justified its price under paragraph 94 of the *Third Order on Reconsideration*.[15] However, Operator has not shown that its price was reasonable, so we must recalculate the Inflation Adjustment Factor on the basis of the most accurate data currently available for the date that Operator was requested to file FCC Form 393.[16] On July 29, 1994, the U.S. Department of Commerce released corrected inflation data including GNP-PI figures of 122.3 for the third quarter of 1992 and 126.5 for the fourth quarter of 1993. Using these GNP-PI figures, we calculate an Inflation Adjustment Factor through February 1994, the month preceding Operator's last legal filing date of March 28, 1994 filing,[17] of 1.039.

IV. CONCLUSIONS

7. Upon review of the record herein, and having incorporated the adjustments discussed above, we conclude that Operator has failed to justify the rate it was charging during the period in question. Operator's showing justifies a maximum reasonable CPS tier price of $12.58 per month (plus franchise fee) for the period starting on February 28, 1994 and ending on May 14, 1994 for CUID No. FL0340.[18]

8. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the complaints against the cable programming service price charged by Cox Cable University City, Inc., in Alachua County, Florida, CUID No. FL0340, ARE GRANTED TO THE EXTENT INDICATED HEREIN.

9. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's Rules, 47 C.F.R. § 76.961, that Cox Cable University City, Inc. shall refund to subscribers in the franchise area designated by CUID No. FL0340 that portion of the amount paid for cable programming service from February 28, 1994[19] to May 14, 1994, that exceeded $12.58 per month (plus franchise fee) and was thus unreasonable, plus interest to the date of the refund.

10. IT IS FURTHER ORDERED that Cox Cable University City, Inc. shall promptly determine the overcharges to CPS subscribers of CUID No. FL0340 for the same period,

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[13] First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 93-428, 9 FCC Rcd 1164, 1196 n.92 (1993) ("Our provision to gross-up the return amount for income taxes applies to all tax paying business entities to the extent that they have a state or federal income tax obligation.")

[14] *See* Questions and Answers on Completion of FCC Form 393 and Associated Filing Requirements, Question and Answer No. 7 (released Nov. 10, 1993) ("Where operators have restructured equipment rates as of September 1, 1993 in accordance with our regulations... operators will enter on Line 104 the same, or nearly the same, number as on Line 301.").

[15] Third Order on Reconsideration, MM Docket Nos. 92-266 and 92-262, FCC 94-40, 9 FCC Rcd 4316, 4348 (1994).

[16] *See* 47 C.F.R. § 76.922(b)(9)(iii) (if a cable operator fails to justify its rates, rates must be adjusted in accordance with the most accurate data available at the time of analysis).

[17] The Inflation Adjustment Factor is calculated using the number of whole months between September 30, 1992 and the date of filing. FCC Form 393, page 11, instructions for Line 124.

[18] This finding is based solely on the representations of the cable operator listed in paragraph 5, *supra*, and the modifications described in paragraph 6, *supra*. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

[19] Our jurisdiction to order a refund dates from the earliest date a complete and timely complaint is filed with the Commission. *See* 47 C.F.R. § 76.961(b).

and shall within 30 days of the release of this Order file a report with the Chief, Cable Services Bureau, stating the cumulative refund amount so determined (including franchise fees and interest), describing the calculation thereof, and describing its plan to implement the refund within 60 days of Commission approval thereof.

11. IT IS FURTHER ORDERED, pursuant to Section 76.922(b)(4)(C) of the Commission's Rules, 47 C.F.R. § 76.922(b)(4)(C), that Cox Cable University City, Inc. shall, within 30 days of the release of this Order, revise its Form 1200 filing for CUID No. FL0340 for the period beginning May 15, 1994, to reduce the monthly charge per tier as of March 31, 1994 for Tier 2 (Line A6b) to equal the maximum price for that franchise area (plus franchise fee).[20]

12. IT IS FURTHER ORDERED that Cox Cable University City, Inc. shall place into effect, within 30 days after submission of the revised Form 1200 filing required above, a CPS tier price for CUID No. FL0340 that reflects the reduction in the CPS rate determined in this Order.

13. IT IS FURTHER ORDERED, pursuant to Section 76.960 of the Commission's Rules, 47 C.F.R. § 76.960, that Operator shall not be required to obtain advance approval of adjustments to its CPS price in the franchise area addressed herein for one year following the release of this Order, due to Operator's having submitted in good faith an optional supplemental filing in response to our *Public Notice*.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Service Bureau

[20] We reserve the right to make further adjustments to Operator's price for the period after May 14, 1994, upon completion of our review of Operator's Form 1200 filing.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

The Bell Atlantic Telephone Companies

Petition for Waiver of Section 69.106
of the Commission's Rules to Offer
Video Dialtone Service in a Limited
Market Trial in Northern Virginia

ORDER

Adopted: April 5, 1995; Released: April 6, 1995

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. In the *VDT Reconsideration Order*, the Commission ruled that a local exchange carrier that wishes to provide video dialtone service must file petitions for waiver of our Part 69 rules prior to the establishment of a video dialtone rate structure.[1] On January 27, 1995, the Bell Atlantic Telephone Companies (Bell Atlantic) filed a petition to introduce a rate structure and tariff rate elements for video dialtone service in a limited market trial in northern Virginia.[2] A Public Notice seeking comment on thepetition was issued February 2, 1995.[3] The National Cable Television Association (NCTA) filed an opposition to Bell Atlantic's waiver petition. For the reasons discussed below, we grant Bell Atlantic's waiver request.

II. SUMMARY OF PETITION AND PLEADINGS

2. Bell Atlantic seeks a temporary waiver of Sections 69.110, 69.112 and 69.305(b) of the Commission's rules[4] for the duration of its market trial in northern Virginia.[5] It proposes a three-part rate structure for service offered over its ADSL system In Fairfax, Virginia. First, video dialtone (VDT) access link charges will be assessed to the programmer-customer ("programmer") for access to the video distribution office (VDO).[6] The programmer may obtain access to the VDO through three different means (1) at its point-of-presence in the LATA, (2) at the Serving Wire Center (SWC) or (3) it could obtain expanded interconnection at the VDO.[7] Second, pointcast service charges will be imposed for programmer access to end user subscribers. Specifically, the programmer will be assessed monthly port charges, a monthly connection charge for each of its end user subscribers, and a minutes of use charge. In addition the pointcast service charges include a monthly charge to the end user subscriber for connection to the video dialtone system.[8] Third, an optional signalling port charge provides the programmer with additional signalling capacity to supportinteractive applications.[9] Each rate element has a non-recurring rate element, but Bell Atlantic seeks to waive the non-recurring charges for the market trial.[10] Bell Atlantic also requests a waiver of Section 69.305(b) of the Commission's rules[11] to allow it to assign the video dialtone investment included in Cable and Wire Facilities Category 2 directly to the appropriate rate element.[12]

3. NCTA complains that the proposed rate structure does not include a switching charge, even though it appears that the trial includes switched services.[13] NCTA also argues that placing all the VDT rate elements in the transport category ignores the regulatory conventions of Part 69 and allows Bell Atlantic maximum flexibility to place the costs of video dialtone on other access services and users.[14] Additionally, NCTA claims that imposing a charge on end user subscribers could cause competitive harm. It claims that since Bell Atlantic's affiliate, Bell Atlantic Video Services (BVS), will provide programming during the trial, end users subscribing to BVS could get just one bill, while end users subscribing to other programmers would get two bills -- one from the programmer for programming services and one from Bell Atlantic for the monthly connection charge.[15] Finally, NCTA states that Bell Atlantic has not explained how the VDT access link charges differ from

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[1] Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58 and Amendments of Parts 32, 36, 61, and 69 of the Commission's Rules to Establish and Implement Regulatory Procedures for Video Dialtone Services, *Memorandum Opinion and Order On Reconsideration and Third Further Notice of Proposed Rulemaking* (*"VDT Reconsideration Order"*), 10 FCC Rcd 244, 335-36, ¶ ¶ 197-98 (1994).

[2] Bell Atlantic has received Section 214 authorization to conduct a market trial of Asymmetric Digital Subscriber Line (ADSL) technology in Fairfax, Virginia for a six-month period. Chesapeake and Potomac Telephone Company of Virginia, File No. W-P-C 6834, *Order and Authorization* (*"Section 214 Authorization"*), FCC 95-15 (rel. Jan. 20, 1995).

[3] Public Notice, Bell Atlantic Petitions for Waiver of Part 69 Rate Structure, Files Tariff Introducing Video Dialtone Market Trial in Northern Virginia, DA 95-145 (rel. Feb. 2, 1995). Concurrently with its waiver request, Bell Atlantic filed Transmittal No. 742, F.C.C. Tariff No. 10, to provide video service during the market trial in accordance with the terms of its waiver request. The Common Carrier Bureau has established procedures allowing local exchange carriers to file simultaneously Part 69 rate structure waiver requests and tariffs for video dialtone market trials. Public Notice, Common Carrier Bureau Establishes Procedures for Tariff Filings and Part 69 Waiver Requests for LEC Video Dialtone Market Trials (*"Procedures Public Notice"*), DA 95-211 (rel. Feb. 10, 1995). Issues regarding Transmittal No. 742 will be addressed in a separate order.

[4] 47 C.F.R. §§ 69.110, 69.112, 69.305(b).

[5] Bell Atlantic Petition at 2.

[6] According to Bell Atlantic, "[t]he video distribution office is the telephone company location from which signals are distributed, as authorized by the programmer-customers, to end user subscribers." *Id.* at 4, n.12.

[7] *Id.* at 3-5.

[8] *Id.* at 5-6.

[9] *Id.* at 6.

[10] *Id.* at 5.

[11] 47 C.F.R. § 69.305(b).

[12] Bell Atlantic Petition at 6.

[13] NCTA Opposition at 3.

[14] *Id.* at 4-6.

[15] *Id.* at 10.

standard tariffed broadband transport. It states that these two rate elements should be priced identically to eliminate the need for the VDT access link charges.[16]

4. In its reply, Bell Atlantic states that because ADSL service does not include a traditional switching component, it did not include a switching rate element in its waiver request. According to Bell Atlantic, the costs of routing are to be recovered through a combination of the pointcast service connection charge and the pointcast service usage charge.[17] Bell Atlantic states that NCTA assumes that it has placed all video dialtone charges in transport. Bell Atlantic notes, however, that the petition is silent on that point, since the Commission has an ongoing proceeding to determine where such charges should be placed.[18] It argues that the Commission should not wait for a conclusion of that proceeding before acting on the petition, however, and states that it will be able to assign video dialtone revenues and costs to whatever category the Commission may ultimately determine to be appropriate.[19] Bell Atlantic also argues that NCTA's complaint regarding the connection charge imposed on end user subscribers is inappropriate since it deals with billing, and not the rate element.[20] Finally, Bell Atlantic states that the VDT access link is a unique service that differs from existing transport since it is only one-way and terminates at the VDO. Bell Atlantic claims that this results in real cost differences and that using DS1 pricing for the VDT access links would result in a price that exceeds fully loaded costs.[21]

III. DISCUSSION

5. In the *VDT Reconsideration Order*, the Commission found that video dialtone does not fit within the access charge rate structure established in Part 69.[22] It declined, however, to prescribe a new rate element for video dialtone at that time. The Commission, noting that video dialtone is a nascent service, concluded that prescribing a rate structure at this early stage in the development of video dialtone would create a significant risk that the rate structure would fail to produce rate elements that logically match each carrier's video dialtone offering. Instead, the Commission decided, as it had done before for other new services, that requiring local telephone companies to seek Part 69 waivers for rate elements would best serve the public interest, at least on an interim basis.[23] The Commission found that this process would allow all interested parties an opportunity to comment on whether the proposed rate structure tracks the manner in which costs are incurred in providing the specific video dialtone service in question.[24] In accordance with that directive in the *VDT Reconsideration Order*, Bell Atlantic filed this petition for waiver.

6. Under Section 1.3 of our rules, we are authorized to grant waivers "if good cause therefor is shown."[25] As interpreted by the courts, this requires that a petitioner demonstrate that "special circumstances warrant a deviation from the general rule and such a deviation will serve the public interest."[26] In this case, we find that the deployment of video dialtone was not anticipated when the Part 69 rules were adopted, which constitutes "special circumstances" for purposes of this waiver.

7. We have reviewed the petition and the associated pleadings and find that the rate structure proposed by Bell Atlantic appears to be reasonable for the video dialtone architecture and the service it will provide during the trial. Under the proposed rate structure, a programmer may choose to obtain access from Bell Atlantic at the programmer's point-of-presence in the LATA, at the SWC, or directly at the VDO through expanded interconnection. In the last case the programmer may either provide its own transport to the VDO or obtain such services from competitors to Bell Atlantic. We find that the VDT access links charges provide an adequate level of unbundling of service for this market trial.

8. We also find that the pointcast charges appear to be reasonable for the proposed trial architecture and service. The use of port charges, connection charges and minutes of use charges appears to appropriately disaggregate the ADSL architecture to its logical rate components. Assessing the programmer for the ports it uses and minutes of use of the video switch generated by its subscribers, places the cost for those services on the cost causer. As the end user is responsible for the need to establish an ADSL connection to the subscribers premise. it is not unreasonable to apportion the cost of the connection between the end user and theprogrammer. Likewise, the signalling port charge appears to be reasonable and to recover the cost incurred to provide this service from the cost causer since, as an optional service, only those programmers that use the service will be charged for it.

9. Further, we do not find that the arguments raised in the opposition provide a basis for denying this waiver, particularly since it is only for the duration of this market trial. We find reasonable Bell Atlantic's argument that the routing involved with ADSL technology is not equivalent to traditional telephone switching and that its costs can be recovered from other charges.[27] Regarding the category in which the proposed rate elements are to be placed, in the

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[16] *Id.* at 10-11.

[17] Bell Atlantic Reply at 13-15.

[18] *Id.* at 15 *citing* Price Cap Performance Review for Local Exchange Carriers; Treatment of Video Dialtone Services Under Price Cap Regulation, CC Docket No. 94-1, *Further Notice of Proposed Rulemaking* (*"VDT Price Cap Notice"*), FCC 95-49 (rel. Feb. 15, 1995).

[19] Bell Atlantic Reply at 15-16.

[20] *Id.* at 16. According to Bell Atlantic, other programmers could have unified billing to their end user subscribers by either paying the end user subscriber connection charge themselves and billing the end user for it or by using Bell Atlantic as its billing agent. *Id.* at 16-17.

[21] *Id.* at 17-18.

[22] *VDT Reconsideration Order*, 10 FCC Rcd at 335-36, ¶ ¶ 195-99.

[23] *Id.* at 336, n.368 *citing Provision of Access for 800 Service*, 4 FCC Rcd 2824, 2833 (1989) (carriers were permitted to receive Part 69 waivers to establish separate unbundled subelements for 800 data base access and vertical features prior to the establishment of a permanent rate structure); Southwestern Bell Telephone Company, *Petitions for Waiver of Part 69 of the Commission's Rules*, 6 FCC Rcd 6095, 6098 (carriers were permitted to receive Part 69 waivers to offer Line Identification Database (LIDB) service prior to the establishment of a permanent rate structure).

[24] *VDT Reconsideration Order*, 10 FCC Rcd at 335-36, ¶ 197.

[25] 47 C.F.R. §1.3.

[26] *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

[27] *See* Bell Atlantic Reply at 14.

VDT Reconsideration Order the Commission tentatively concluded that there should be a separate price cap basket for video dialtone.[28] As Bell Atlantic notes, the Commission has an ongoing proceeding to determine whether to establish such a basket and what other revisions might be necessary to the price cap rules to accommodate video dialtone service.[29] We agree with Bell Atlantic that we need not delay consideration of this petition pending the completion of that proceeding. Since Bell Atlantic is required to segregate all costs incurred in providing video dialtone service during the trial,[30] it should be able to place those costs in the appropriate basket and/or category once the Commission has completed its rulemaking. As the Commission noted in the *VDT Reconsideration Order*, this interim arrangement should not have an impact on the rates since, as a new service, these costs are not brought into price caps until the annual access filing after the rates have been effective for one year.[31] We, therefore, decline to grant Bell Atlantic's waiver of Section 69.305(b) of the Commission's rules,[32] to allow it to assign video dialtone investment to the transport element. Finally, we believe that Bell Atlantic has adequately explained why the VDT access link service is different from standard interstate access transport offerings. VDT access links are one-way, not two-way, and these circuits are designed to carry video transmissions to be connected at the VDO.[33] These access links do not provide the same redundancy and alternative route protection as DS1 service. In addition, while DS1 service are also not tested as rigorously or provisioned to the same high quality standards as the typical high capacity special access of switched transport trunks.[34] Therefore, we find Bell Atlantic's argument that the VDT access links warrant a separately identifiable rate element to be reasonable for this trial.

10. The Bureau has conducted its review of this Part 69 waiver request consistent with procedures adopted to make possible an expedited review process for video dialtone market trials.[35] We wish to emphasize that, consistent with Bell Atlantic's request,[36] we are only approving this rate structure for the duration of this video dialtone market trial.[37] The waiver we grant here is specific to the ADSL market trial in northern Virginia for which Bell Atlantic has obtained Section 214 authorization.[38] If Bell Atlantic elects to use a similar rate structure for a permanent service offering in the same service area or for a permanent or trial offering in any other service area, it will first have to file and obtain approval of another Part 69 waiver request. We are hopeful that the information gained through this market trial will not only assist Bell Atlantic's marketing and technical efforts, but will provide regulatory benefits as well. Information gained from this market trial would enable Bell Atlantic, the Commission, and other parties to evaluate how well this rate structure worked during this trial and propose any necessary modifications for future offerings. Likewise, the results of this trial may provide the Commission and other parties valuable information regarding how other proposed rate structures might work for this or other types of video dialtone architectures and services.

IV. ORDERING CLAUSE

11. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91 and 0.291, the petition for waiver filed by the Bell Atlantic Telephone Companies IS GRANTED to the extent provided herein and is otherwise DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen M.H. Wallman
Chief, Common Carrier Bureau

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[28] *VDT Reconsideration Order*, 10 FCC Rcd at 347, ¶ 222.
[29] *VDT Price Cap Notice, supra.*
[30] *Section 214 Authorization*, at 28-29, ¶ 56, and 32, ¶ 65 (b).
[31] *See VDT Reconsideration Order* at 347, ¶ 222.
[32] 47 C.F.R. § 69.305(b).
[33] Bell Atlantic Reply at 17.
[34] *See* Letter from Marie T. Breslin, Bell Atlantic, to William Caton, FCC (dated April 4, 1995). *See also* Reply of Bell Atlantic, Bell Atlantic Telephone Companies Tariff F.C.C. No. 10, Transmittal 741 (Video Dialtone Services), Affidavit of Charles L. Jackson at 12 (filed March 6, 1995).
[35] *Procedures Public Notice, supra, note 3.*
[36] Bell Atlantic Petition at 1-2.
[37] Bell Atlantic's Section 214 authorization permits it to conduct a market trial by passing no more than 2,000 homes and businesses for a six month period. Bell Atlantic may extend the market trial for an additional three months. *Section 214 Authorization* at 31, ¶ 62.
[38] *See Section 214 Authorization, supra, note 2.*

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Cost Support Material
to be Filed With
1995 Annual Access Tariffs

1995 Annual Access Tariffs

United States Telephone Association
Application for Waiver

Revisions To Tariff Review Plan for Price Cap Companies and Order

Adopted: April 14, 1995; Released: April 14, 1995

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. This document sets forth revisions to the Common Carrier Bureau's (Bureau's) 1995 Tariff Review Plans (*1995 TRP*)[1] necessitated by the Commission's recent adoption of the *First Report and Order* in the *LEC Price Cap Performance Review* proceeding,[2] the *Report and Order* in the *LEC Price Cap Regulation* proceeding,[3] and the Bureau's action extending the deadline for price cap local exchange carriers (LECs) to file their 1995 annual access tariffs.[4] In particular, this document identifies those changes to the LEC price cap plan that require modification to the *1995 TRP* summary material that affected LECs should provide with their 1995 annual access tariff filings. In addition, this document provides the LECs with instructions on how to complete the *1995 TRP* in light of the changes to the LEC price cap plan and our decision to extend the filing deadline for the 1995 access filings and the tariffs' effective date. We also direct the price cap LECs to make appropriate adjustments to their indexes to account for the effects caused by rescheduling their 1995 annual access filings. Finally, we dismiss MCI's petition for clarification of the *1995 USTA Waiver Order* for the reasons discussed below.

II. BACKGROUND

2. On February 15, 1995, we adopted the *1995 TRP* for price cap companies, which sets forth summary support material LECs should file to support their 1995 annual access tariff filings. The *1995 TRP*, like previous TRPs, provides price cap LECs with data formats to display basic cost, demand, and rate information in a consistent manner. This uniform presentation assists the Commission and interested parties in their review of the LECs' annual access tariff filings. In the *1995 TRP*, we observed that the *LEC Price Cap Performance Review* proceeding was pending before the Commission.[5] Furthermore, we stated that "if the Commission adopted any changes to the price cap rules that would affect the 1995 filing and necessitate a revision to the TRP, we [would] modify the price cap TRP accordingly."[6]

3. On March 30, 1995, the Commission adopted the *First Report and Order* in the *LEC Price Cap Performance Review* proceeding. In that Order, the Commission, among other changes, adopted rules that require a one-time adjustment to the price cap indexes, modified the treatment of exogenous costs, and increased pricing flexibility for within-band tariff filings. Some of those changes to the LEC price cap plan require modifications to the *1995 TRP* or other summary support materials, which should be included with the annual access tariff filings, as discussed below.

III. REVISIONS TO THE LEC PRICE CAP PLAN AFFECTING THE 1995 TRP

A. The X-Factor

1. Price Cap Revision

4. The Commission adopted a new minimum X-Factor and two optional X-Factors for the 1995 annual access tariff filing.[7] Specifically, the Commission adjusted the current minimum X-Factor upward by 0.7 percent to 4.0 percent, and adopted two new, optional X-Factors of 4.7 percent and 5.3 percent.[8]

2. 1995 TRP Adjustments

5. The changes associated with the interim X-Factors do not require any modification to the *1995 TRP*. Nor is it necessary to provide LECs with any new instructions regarding the general application of the X-Factors to the price cap formula or how to complete the various charts in the *1995 TRP*.

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[1] *See* Cost Support Material To be Filed with 1995 Annual Access Tariff, Tariff Review Plans, DA 95-264 (rel. Feb. 17, 1995) (*1995 TRP*).

[2] *See* Price Cap Performance Review for Local Exchange Carriers, Notice of Proposed Rulemaking, CC Docket No. 94-1, 9 FCC Rcd 1687 (1994) (*LEC Price Cap Performance Review*); First Report and Order, CC Docket No. 94-1, FCC 95-132, (rel. April 7, 1995) (*First Report and Order*).

[3] *See* Price Cap Regulation of Local Exchange Carriers, Rate of Return Sharing and Lower Formula Adjustment, Notice of Proposed Rulemaking, 8 FCC Rcd 4418 (1993) (*LEC Price Cap Regulation*); Report and Order, CC Docket No. 93-179, FCC 95-133 (adopted Mar. 30, 1995) (*Add-back Order*).

[4] *See* 1995 Annual Access Tariff, United States Telephone Association Application for Waiver, DA 95-494 (rel. March 16, 1995) (*1995 USTA Waiver Order*).

[5] *1995 TRP*, para. 3.

[6] *Id.*

[7] *First Report and Order*, para 144. The X-Factor is a productivity offset that reflects the fact that telephone carriers, historically, have been more productive than the economy as a whole and that telephone rate trends have been below the level of inflation. *See* Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Order, 5 FCC Rcd 6786, 6796 (*LEC Price Cap Order*).

[8] *First Report and Order*, para. 199.

B. Rate-of-Return Backstop Mechanisms

1. Price Cap Revision

6. For the annual 1995 access tariff filings, the Commission adopted rate-of-return sharing thresholds for the minimum X-Factor, and for the 4.7 optional X-Factor, and imposed no sharing obligation for LECs that select the optional X-Factor of 5.3 percent.[9]

2. 1995 TRP Adjustments

7. The changes associated with the revised sharing thresholds do not require any modification to the *1995 TRP*. Nor is it necessary to provide LECs with any new instructions regarding the general application of the modified plan's sharing zones or how to complete the various charts in the *1995 TRP*.

C. One-time Rate Changes

1. Price Cap Revision

8. The Commission determined in the *First Report and Order* that a one-time reduction in the price cap indexes is necessary for the common line basket, traffic sensitive basket, and trunking basket.[10] Therefore, LECs were directed to make a one-time reduction in the PCIs in the 1995 annual access tariff filings in order to reflect this adjustment in interstate access rates that take effect on August 1, 1995.[11] Specifically, the Commission concluded that for each year from 1991-1994 that a LEC elected an X-Factor of 3.3 percent, the X-Factor for that LEC was 0.7 percent too low.[12] Therefore, in its 1995 annual access tariff filing, each price cap LEC is required to adjust each PCI to the correct productivity level on a going-forward basis.[13] This one-time adjustment is to be made by multiplying each current PCI by a one-time adjustment based on the effect of X-Factors chosen in past annual filings.[14]

2. 1995 TRP Adjustments

9. We have revised Chart PCI-1 in order to display the one-time adjustment factor and the application of that factor to the proposed PCIs for each of the baskets. Line 250 displays the one-time adjustment and line 260 displays the adjusted PCI derived by multiplying the current PCI by the adjustment factor. The adjusted PCI becomes the current PCI for the purpose of calculating all proposed index changes. We have also added a place for LECs to report the X-Factor for years 1991-1994. See attachment labeled as Appendix A.

D. Exogenous Cost Adjustments

1. Price Cap Revision

10. In the *First Report and Order*, the Commission revised its rules governing exogenous[15] treatment of cost changes that result from changes in the Uniform System of Accounts (USOA) requirements. Specifically, the Commission limited exogenous cost treatment of cost changes resulting from changes in accounting requirements to economic cost changes caused by administrative, legislative, or judicial requirements that are outside the control of the carriers and not reflected in GDP-PI.[16] The Commission indicated that the exogenous cost rule revisions would affect the GAAP accounting treatment of employee post-retirement liabilities known as "other post-retirement employee benefits" or "OPEBs."[17] In particular, the Commission emphasized that the new rule revisions would have an impact on GAAP changes that have been adopted by the Financial Accounting Standard Board (FASB), such as the Statement of Financial Accounting Standards-106 (SFAS-106), which requires companies to account for post-retirement benefits on an accrual basis beginning December 15, 1992, and SFAS-112, which requires that accounting for expenses for severance pay and other benefits for laid-off or otherwise separated workers be made on an accrual, rather than a cash or "pay as you go" basis.

11. The *First Report and Order* indicates that since it appears that a large part of the accounting cost changes resulting from the adoption of SFAS-106 may not represent economic cost changes, most, if not all, of the ongoing cost changes resulting from the adoption of SFAS-106 will not be eligible for exogenous treatment under our revised rules on a prospective basis.[18] The Commission also notes that the revised exogenous cost rules will affect unamortized costs associated with OPEB transitional benefit obligations (TBOs).[19] The *First Report and Order* requires each LEC to reduce its PCI by an amount equal to the exogenous cost adjustments made to reflect the implementation of SFAS-106 for OPEB costs. In addition, the *First Report and Order* states that any future requests by a price cap LECs for exogenous cost treatment based on SFAS-112 will be governed by the revised rule.[20]

2. 1995 TRP Adjustments

12. The Commission's revisions to the exogenous cost rules do not require modifications to the *1995 TRP*. Instead, the removal of prior exogenous cost adjustments based on SFAS-106 and SFAS-112 should be treated as separate exogenous cost adjustments and included on the existing Chart EXG-1 under "other" exogenous costs.[21] The LECs should include a workpaper in their cost support showing the derivation of these changes. In this workpaper, LECs should also display the total amount of the initial

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[9] *Id.* at paras. 218-223.
[10] *Id.* at para. 247.
[11] *Id.*
[12] *Id.* at para. 248.
[13] *Id.* at para. 247.
[14] By referring to the "current" PCI, we mean the PCI that will be in effect on July 31, 1995.
[15] *See* Section 61.45(d) of the Commission's Rules, 47 C.F.R. § 61.45(d).
[16] *Id.* at para. 293.
[17] *Id.* at para. 307.
[18] *Id.* at para. 307.
[19] *Id.* at para. 308. SFAS-106, in addition to requiring accrual treatment for ongoing OPEBs, requires companies to book the previously unaccrued OPEB amount for retirees and active employees as of the date that the company adopts SFAS-106. This amount is known as the TBO.
[20] *Id.* at para. 310.
[21] Chart EXG-1 presents supporting data for computing the exogenous cost changes used in deriving the PCI for each basket.

exogenous cost change in addition to the amount removed, and identify relevent tariff transmittals and letters filed with the Commission.

E. The Inflation Measure

1. LEC Price Cap Revision

13. The Commission's price cap formula for LECs has used the U.S. Department of Commerce, Bureau of Economic Analysis' 45-day estimate of the Gross National Product Price Index (GNP-PI) as its inflation measure. The *First Report and Order* replaces GNP-PI with the Gross Domestic Product Price Index (GDP-PI).[22]

2. TRP Adjustment

14. We have revised Chart PCI-1 in the *1995 TRP*, in order for the LECs to report the GDP-PI.

F. Adoption of Add-back Rule

1. LEC Price Cap Revision

15. In the *Report and Order*, the Commission adopted a new rule explicitly incorporating a prospective "add-back" requirement for purposes of calculating the earnings used to determine the sharing and low-end adjustment under the LEC price cap plan. Specifically, the add-back rule requires price cap LECs to eliminate the effects of sharing or low-end adjustments incurred by the prior year's earnings on the current year's earnings. Based on the new rule, the current year's earnings, as adjusted, determine whether sharing is required, or a low-end adjustment is permitted in the next tariff year. The Commission noted that because the adopted add-back rule is to be applied only on a prospective basis, the rule will first be applied when carriers file their 1995 access tariffs. At that time, carriers must make an adjustment to offset any sharing or low-end adjustment made for 1994 rates to determine any 1995 required sharing or permitted low-end adjustments.

2. 1995 TRP Adjustments

16. Based on the *Add-back Order*, LECs should file a revised rate-of-return report, Form 492-A, and include this report and a workpaper displaying the add-back calculation in the cost support with their annual filing.

IV. OTHER FACTORS AFFECTING THE 1995 TRP

A. Extension of the Filing Date and Establishment of New Effective Date for Price Cap LECs' 1995 Annual Access Tariffs

1. USTA Application for Waiver

17. On February 24, 1995 the United States Telephone Association (USTA) filed an application for waiver of Part 69 of the Commission's Rules[23] to allow LECs subject to price cap regulation to file their annual interstate access tariff 30 days following the release of the Commission's Order in the *Price Cap Performance Review for LECs* proceeding.[24] USTA argued that if the LECs subject to price cap regulation filed their annual access tariffs and summary cost support material specified in the *1995 TRP* by March 31, 1995, the date that the tariffs were initially due, there was a significant likelihood that those LECs would be required to refile their tariffs to reflect the changes to the price cap rules adopted by the Commission in the *LEC Price Cap Performance Review* proceeding. On March 15, 1995, we granted USTA's request and, on our own motion, also established an August 1, 1995 effective date for the price cap LECs' 1995 annual access tariffs.[25]

2. 1995 TRP Adjustments

18. Our action in establishing a new effective date for the price cap LEC's annual access tariffs requires the LECs to use a base period other than calendar year 1994.[26] Consistent with standard industry reporting requirements, we believe, however, that LECs should use calendar year 1994 as a base period for developing the PCIs to be effective August 1, 1995. Therefore, for this purpose, we grant the LECs a waiver of Section 61.3(e) of our rules to use calendar year 1994 as the base period in preparing their price cap 1995 annual access tariff filings.

19. We note that although the base period is a 12 month period, the tariffs that are scheduled to become effective on August 1, 1995 will be in effect for a period of 11 months before the beginning of the 1996 tariff year. In addition, the PCIs that became effective July 1, 1994 will have been in effect for a period of 13 months. PCIs, however, are calculated assuming a tariff year of 12 months. Thus, the extension of the filing date for the price cap LECs creates an inconsistency between the data used to develop the PCIs and the length of time that the PCIs are effective. For example, to reflect the proper price cap sharing, the PCIs would have to be in effect for 12 months because the sharing included in the PCI is based on an annual period. We therefore are requiring a one time adjustment to the proposed PCIs effective August 1, 1995 in order to correct this situation. We note that we also have added a row to Chart PCI-1 to show the adjustment factor and its application.

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[22] *First Report and Order*, para. 351.

[23] 47 C.F.R. Part 69.

[24] We also note that on March 6, 1995, the National Exchange Carriers Association filed a letter supporting USTA's application for waiver, but requesting that the Commission extend the effective date of NECA's tariffs in the event that the Commission extended the effective date of the price cap LEC's annual access tariffs. In any event, NECA filed its annual access tariff on March 31, 1995, as required by our rules. In light of NECA's timely filing of its annual access tariff, NECA's waiver request is moot.

[25] *1995 USTA Waiver Order*, paras. 9-10.

[26] 47 C.F.R. § 61.3(e). Section 61.3(e) defines the base period for establishing historical data used to develop price cap indices as the 12 month period ending six months prior to the effective date of the annual price cap tariffs.

20. In order to adjust the PCIs, LECs should first calculate their proposed PCIs using the formulas in the price cap rules, including the one-time adjustment to rates, and then make the following adjustment:

$PCI_3 = PCI_2 + PCI\text{-}Factor$, and

$PCI\text{-}Factor = [(PCI_2 - PCI_1) \times 1/11]$, where

PCI_1 = the PCI in effect on July 31, 1995 prior to reinitialization,

PCI_2 = the PCI that would have been in effect on August 1, 1995, and

PCI_3 = the PCI that will be in effect on August 1, 1995.

21. This adjustment spreads out the difference between the PCI in effect during July 1995 and what it would have been under a full 1995 tariff year, over the next 11 months. LECs should make all other PCI calculations before adding this PCI-Factor in deriving the proposed PCI. LECs are required to make a reverse adjustment, taking out the PCI-Factor from the PCI in effect on June 30, 1996, prior to calculating the proposed PCI for the 1996 tariff year.[27] Finally, we note that we have adjusted Chart PCI-1 to display the PCI-Factor in line 280 and the revised proposed PCI in line 290.

3. MCI Petition for Clarification of *1995 USTA Waiver Order*

22. On April 7, 1995, MCI filed a petition for clarification of the *1995 USTA Waiver Order*. MCI requests that the Bureau clarify that the price cap LECs are required to adjust their 1995 access rates to recover the same amount of revenue that they would have collected in 1995 had the 1995 rates gone into effect beginning July 1, 1995, when the LEC tariffs were originally scheduled to become effective.[28] In view of our action here requiring the LECs to adjust their 1995 rates, MCI's concern is no longer warranted. Accordingly, MCI's petition for clarification is dismissed.

V. REVISED PROCEDURES FOR 1995 ANNUAL ACCESS CHARGE TARIFFS

A. New Filing Date for Price Cap LECs' 1995 Annual Access Tariffs

23. In view of our action in the *1995 USTA Waiver Order* permitting the price cap LECs to file their 1995 annual access tariffs 30 days following the release date of the Commission's Report and Order in the *LEC Price Cap Performance Review* proceeding and the Commission's subsequent release of the *First Report and Order* on April 7, 1995, the price cap LECs will now be required to file their 1995 annual access tariffs or revisions to existing tariffs to be effective August 1, 1995, on May 9, 1995. Carriers are reminded to adhere to the procedures established in the *1995 TRP*.

B. New Filing Dates for Petitions and Replies

24. In light of the new filing dates for the price cap LECs, petitions concerning these tariffs will be due on May 30, 1995, regardless of whether the tariff revisions are submitted on or before May 9, 1995. Replies may be filed only by the publishing carriers and will be due on June 7, 1995. This action is taken pursuant to delegated authority granted to the Bureau by the Commission in the *First Report and Order* in the *LEC Price Cap Performance Review* proceedings.[29] Once again, carriers should adhere to the procedures for petitions and replies established in the *1995 TRP*.

VI. ORDERING CLAUSES

25. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91, and 0.291, *sua sponte*, the LECs are granted a waiver of Section 61.3(e) of our rules to use calendar year 1994 as the base period to fulfill the LEC price cap annual access tariff filing requirement.

26. IT IS FURTHER ORDERED that the LECs are required to adjust their proposed PCIs using the formulas in the price cap rules and then make the adjustments pursuant to paragraph 18 in this Order.

27. IT IS FURTHER ORDERED that the price cap LECs file their 1995 annual access tariffs, to be effective August 1, 1995, on or before May 9, 1995.

28. IT IS FURTHER ORDERED that petitions concerning the price cap LEC's 1995 annual access tariffs will be due on May 30, 1995, with replies due on June 7, 1995

29. IT IS FURTHER ORDERED that the MCI's Petition for Clarification of the *1995 USTA Waiver Order* is DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen M.H. Wallman
Chief, Common Carrier Bureau

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[27] The current PCI that should be used in calculating the proposed PCI for the 1996 tariff year should be PCI2.
[28] MCI Petition for Clarification at 2.
[29] *First Report and Order*, para. 367.

Appendix A

PCI–1
Filing Date:
Filing Entity: test
Transmittal Number: 99999
1995 Annual Filing (Filename: TRP95Z12 – zero–filled)
Page 1 of 1

	COMMON LINE BASKET	TRAFFIC SENSITIVE BASKET	TRUNKING BASKET	INTER–EXCHANGE BASKET
	(A)	(B)	(C)	(D)
100 GDP–PI	0.0000	0.0000	0.0000	0.0000
110 Productivity Factor (X)	0.0000	0.0000	0.0000	0.0000
120 GDP–PI – X	0.0000	0.0000	0.0000	0.0000
130 Y(t–1)	N/A	N/A	N/A	0
140 Delta Y	N/A	N/A	N/A	0
150 Delta Z	0	0	0	0
160 R(t–1)	0	0	0	0
170 Delta Y/R	N/A	N/A	N/A	0.0000
180 Delta Z/R	0.0000	0.0000	0.0000	0.0000
190 W	0.0000	0.0000	0.0000	0.0000
200 W*(GDP–PI – X)	N/A	0.0000	0.0000	0.0000
210 Growth in Min./Line (g)	0.0000	N/A	N/A	N/A
220 W*[GDP–PI – X – (g/2)] / [1 + (g/2)]	0.0000	N/A	N/A	N/A
240 Existing PCI Prior to Adjustment	0.0000	0.0000	0.0000	0.0000
250 One Time X–Factor Adjustment	0.0000	0.0000	0.0000	0.0000
260 Revised Existing PCI (L240 x L250)	0.0000	0.0000	0.0000	0.0000
270 Proposed PCI Prior to Adjustment	0.0000	0.0000	0.0000	0.0000
280 11–Month Tariff Year Adjustment	0.0000	0.0000	0.0000	0.0000
290 Revised Proposed PCI (L270 + Line 280)	0.0000	0.0000	0.0000	0.0000

NOTES:

(1) Display indexes and factors as percent to four decimal places (e.g., display 100% as 100.0000)
(2) Display revenues as whole numbers.
(3) Rows 130 and 160 are computed by multiplying base period quantities by the corresponding rates at the last time the PCI was updated.

	X–Factor For Baskets in Columns A, B, or C
1991 Annual Access Tariff Filing	0.0000
1992 Annual Access Tariff Filing	0.0000
1993 Annual Access Tariff Filing	0.0000
1994 Annual Access Tariff Filing	0.0000

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 92-257

In the Matter of

Amendment of the	RM-7956
Commission's Rules	RM-8031
Concerning Maritime	RM-8352
Communications	

FURTHER NOTICE OF PROPOSED RULE MAKING

Adopted: April 26, 1995; Released: May 25, 1995

Comment Date: September 22, 1995
Reply Comment Date: November 21, 1995

By the Commission:

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I. INTRODUCTION

1. This *Further Notice of Proposed Rule Making* (*Further Notice*) continues our effort to provide adaptive regulations and improve communication capabilities in the Maritime Service begun in our *Notice of Proposed Rule Making and Notice of Inquiry* (*NOI*), released November 30, 1992.[1] By this Notice, we are proposing rules to require minimum digital selective calling (DSC) capabilities in maritime communications, to permit automatic interconnection between maritime VHF radios and the public switched telephone network (PSTN), to establish alternative requirements for narrow-band direct printing emissions, to allow intraservice frequency sharing, and to permit limited maritime mobile sharing of certain private land mobile frequencies. We seek comments to assist us in formulating rules aimed at increasing the efficient use of the maritime radio spectrum and removing economic disincentives to the establishment and maintenance of stations in the maritime services, while at the same time ensuring that the safety of life and property is not adversely affected by these changes.

II. BACKGROUND

2. The Maritime Mobile Radio Service is the oldest radio service administered by the Commission. As radio technology has advanced, the use of maritime radio has expanded. Maritime radios are now found not only on large oceangoing vessels, but on smaller craft of every description, from commercial vessels operating in coastal areas to pleasure boats on the lakes and rivers of the United States, and even in small sailboats and racing sculls. There are now approximately 635,000 vessel licensees in the U.S. Maritime Services. Maritime radio continues to provide a critical safety function, but also is used for commercial operational communications and general purpose communications including personal communications on U.S. waters and the high seas.

3. Changes in communications technology drive changes in communications procedures and markets and necessitate periodic review of our regulations to ensure that they continue to facilitate our regulatory goals of efficient, reliable, flexible communications. The changes proposed here are intended to take advantage of technological advances to make maritime communications widely available and efficient, while ensuring that the core purpose of maritime communications -- safety -- is not compromised.

III. DISCUSSION

A. Digital Selective Calling (DSC)

4. Briefly, DSC is an international system developed for the transmission of digital signaling on designated MF, HF, and VHF radio frequencies. The implementation of the Global Maritime Distress and Safety System (GMDSS)[2]

[1] PR Docket No. 92-257, 7 FCC Rcd 7863 (1992).

[2] The GMDSS, the result of over ten years of work by the world's maritime nations, is an automated ship-to-shore distress alerting system that relies on satellite and advanced terrestrial systems that will be phased in from 1992-1999. *See Report and Order*, PR Docket No. 90-480, 7 FCC Rcd 951 (1992).

amendments to the International Convention for the Safety of Life at Sea (Safety Convention)[3] requires certain ships to be equipped with DSC radio installations. DSC is used to establish contact automatically between marine radio stations for distress calls and routine operational communications.[4] Presently, most radio contact is established by making a voice call and relying on an aural watch by the called party to hear the call. The advantages of DSC include faster distress alerting capabilities and the automatic transmission of information, such as the nature of an emergency situation and the identity and location of the caller. Further, in a non-distress situation, DSC minimizes the connect time necessary to place a call and increases spectrum efficiency.

5. The United States Coast Guard (USCG) submitted a Petition for Rule Making (Petition), RM-8031, dated June 23, 1992, requesting that the Commission require all marine MF, HF, and VHF transmitters sold in the United States after February 1, 1997, to have minimum DSC signalling capability.[5] The USCG noted that in 1999, all vessels subject to the GMDSS regulations will be required to equip with DSC capable transmitters and that it will no longer be possible to contact these GMDSS ships on the present calling channels.[6] The USCG is concerned that marine safety will be compromised if all vessels are not able to communicate effectively with one another, particularly in closing situations.[7] In the *NOI* we asked for comments from the marine community regarding: 1) requiring minimum DSC capability in all marine radios marketed in the U.S. after a date certain, 2) including the capability to interconnect automatically with the PSTN via DSC signalling as a minimum requirement, 3) designating DSC as the only selective calling protocol permitted in the maritime services, and 4) whether the USCG's proposed minimum DSC requirements are sufficient.[8]

6. All commenters supported the USCG's proposal to require minimum DSC capabilities on VHF marine transmitters.[9] For example, SEA, Inc. (SEA) points out that a minimum VHF DSC requirement will greatly enhance safety once the GMDSS is fully operational in 1999 and provide the groundwork for advanced telecommunications services.[10] Further, in support of the USCG proposal, the National Marine Electronics Association (NMEA) suggests implementation occur even sooner, requiring marine radios installed after February 1, 1996, to have minimum DSC capabilities, one year earlier than the USCG proposal.[11] The timetable proposed by NMEA, however, could place unreasonable time constraints on manufacturers and the maritime community. Further, full implementation of the GMDSS requirement to carry DSC equipment is not until February 1, 1999. Therefore, we are proposing that all marine radiotelephone transmitters manufactured or imported into the United States on or after February 1, 1997, or radios installed on or after February 1, 1999, excluding units removed for adjustment or seasonal storage and then reinstalled in the same vessel, must have the minimum DSC capabilities contained in Section 80.203 of the proposed rules.

7. We asked for specific comment on whether the Commission should propose rules declaring DSC to be the only selective calling protocol permitted to be used in the maritime service.[12] Several commenters oppose mandating DSC as the sole selective calling protocol in the maritime services. For example, KFS World Communications, Inc. (KFS), the Maritime Telephone Company (MTC), and the Radio Technical Commission for the Maritime Services (RTCM) all support the use of any "open" protocol,[13] including DSC, for non-distress communications. Additionally, the Electronic Company of New Zealand (ECONZ) points out that products such as Sealink can handle multiple protocols, including DSC, and may be cheaper for public coast stations to implement on public correspondence channels.[14] Global Maritime Communications Systems, Inc. and Ross Engineering Company (GMCSI/REC), however, support DSC as the standard selective calling protocol in preparation for a nationwide system of VHF public coast stations.[15] In contrast, MTC comments point out that there is no need for a standard non-distress protocol because most boating is local.[16] MTC maintains that the local marketplace should determine the protocol of choice.

8. No commenters oppose requiring DSC as the standard selective calling protocol for distress, safety, and calling. We agree, however, with many commenters that DSC may not be the most efficient protocol for establishing routine communications by all marine users. Therefore, we pro-

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[3] The current 1974 Safety Convention, entered into force May 25, 1980, 32 U.S.T. 47, T.I.A.S. 9700, superseded the 1960 and 1948 Safety Conventions.

[4] DSC technical and operational characteristics are found in CCIR Recommendations 493 and 541, respectively.

[5] *See* USCG Petition at 1.

[6] Under the current system, ships stand watch on the international radiotelephone distress and calling frequencies 156.8 MHz (marine VHF channel 16) and 2182 kHz.

[7] For example, barges and tug boats operating in harbors or pleasure boats operating in coastal waters are not subject to GMDSS regulations and will not be required to equip with DSC capable transmitters. Also, implicit in the Coast Guard's petition is that there will be a reduced watch on marine VHF channel 16 by Coast Guard stations after 1999. *See NOI* at ¶ 18.

[8] *See NOI*, at ¶ ¶ 15-18.

[9] Supporting comments were filed by Electronic Company of New Zealand (ECONZ), Global Communications Corporation (GCC), Global Maritime Communications Systems, Inc. and Ross Engineering Company (GMCSI/REC), KFS World Communications (KFS), Marine Telephone Company (MTC), Mobile Marine Radio, Inc. (MMR), National Marine Electronics Association (NMEA), Radio Technical Commission for Maritime Services (RTCM), SEA, Inc. (SEA), and the USCG.

[10] *See* SEA comments at 4.

[11] *See* NMEA comments at 5.

[12] In ¶ 18 of the *NOI* we noted that the Commission's Rules permit the use of selective calling equipment other than DSC for a period of three years after the Commission declares DSC to be the only selective calling protocol permitted in the maritime services. *See* 47 C.F.R. § 80.207(a)(4).

[13] Protocols whose documentation is available to the general public and are non-proprietary in nature are called "open" protocols. The commenters continue to support DSC as the sole selective calling protocol for distress communications. *See* KFS comments at 6, MTC comments at 10, and RTCM comments at 5.

[14] *See* ECONZ comments at 4.

[15] No information concerning plans to develop such a nationwide system has been submitted formally or informally to the Commission. *See* GMCSI/REC comments at 2.

[16] *See* MTC comments at 3.

pose to permit selective calling via any "open" protocol on MF, HF, and VHF frequencies not specifically allocated for DSC.[17]

9. In the *NOI* we asked whether the capability to interconnect automatically with the PSTN should be one of the minimum DSC requirements. RTCM opposes amending the USCG proposal, pointing out that interconnection capability was not incorporated into the USCG proposal because of the added cost.[18] RTCM argues that the minimum requirements were developed in an attempt to achieve reasonable minimum safety and operating considerations with minimal mandatory equipment cost increase. Additionally, if we include interconnection capability as one of the minimum DSC requirements, DSC could become the *de facto* standard for interconnection with public coast stations. This action would be contrary to our decision to permit any "open" protocol and could hinder the development of innovative marine systems. Therefore, because of added cost considerations and the desire to allow any "open " protocol to provide interconnection, we will not include interconnection capability as one of the proposed minimum DSC requirements.

10. In summary, we are proposing that the minimum DSC requirements listed in Appendix B be required for all MF, HF, and VHF radiotelephone transmitters manufactured in, or imported into, the United States on or after February 1, 1997, or marketed or installed in vessels on or after February 1, 1999. Further, we are proposing to permit the use of "open" selective calling protocols on marine VHF vessel operations,[19] on maritime control frequencies and on MF, HF, and VHF public correspondence channels.

B. Automatic interconnection with PSTN

11. In the *NOI,* we noted that placing calls from ship radios into the PSTN is inconvenient and time consuming. The manual intervention needed to place a call into the PSTN, the time delay involved and the frequent need to divulge personal information are possible causes of the displacement of public coast stations by cellular telephones and other communications methods. The current rules effectively prevent automatic interconnection of a ship radio call into the PSTN.[20] We asked whether we should consider changing the rules to permit automatic interconnection for all public coast stations. We further asked what the effects on maritime safety of such an action would be, whether the DSC protocol can provide the signalling necessary for automatic interconnection,[21] and whether we should require operator assistance for ship-to-shore telephone calls.[22]

12. The eight commenters who address this subject[23] are unanimously in favor of allowing automatic interconnection to the PSTN at all public coast stations. They state that automatic interconnection is essential to the ability of public coast stations to compete with other carriers in providing communications services. The commenters also agree that automatic interconnections would have no adverse impact on maritime safety, as the system would allow direct dialing to safety authorities such as the USCG and state and local authorities, while at the same time leaving intact the various methods of broadcast distress calls, such as emergency channels and emergency position indicating radio beacons (EPIRBs). On the question of mandatory operator assistance, the comments are divided. KFS and RTCM recommend requiring an operator to provide assistance on a back-up basis, for reasons of safety and convenience of communications.[24] MTC, NMEA and Mobile Marine Radio, Inc. (MMR) state that we should leave the decision on operator assistance to each public coast station, so that they could provide an operator or not according to the needs of vessels in their areas of coverage.[25] These comments point out that maintaining an operator at a public coast station is expensive, and that this expense could drive some public coast stations out of business.

13. After considering all the information and arguments presented, we propose to amend the rules to allow any public coast station to interconnect automatically maritime radio to the PSTN. We do not propose to mandate a protocol for interconnection, for the same reasons set forth in paragraphs 9 through 11 above. Finally, we propose to allow each public coast station licensee to decide on the need for operator assistance in making calls. Each public coast station is in the best position to evaluate the times when it can expect the heaviest traffic, and hire operators when it is cost effective to do so, leaving unassisted automatic interconnect for periods when the public coast station might otherwise be closed entirely for want of traffic. This proposal should maximize flexibility in the Maritime Mobile Service and accommodate technological advancements in the provision of new services to the boating public, while at the same time protecting the safety function of marine radio.

C. Narrow-Band Direct Printing (NB-DP)

14. NB-DP is a form of telegraphy for the automatic transmission and receipt of data communications in the marine HF band. NB-DP is used for communications either from ship to public coast station or from ship to ship. Because NB-DP is limited to a data modulation rate of 100 baud, communication can be slow, costly, and spectrally inefficient.[26] In the *NOI,* we asked whether the Commis-

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[17] Such selective calling techniques are currently permitted for signalling ship stations and are widely used now in the maritime radio service by public coast stations and private coast stations. *See* 47 C.F.R. § 80.207.

[18] *See* RTCM comments at 6.

[19] "Vessel Operations" is the proposed new name for both commercial and non-commercial communications. *See* ¶ 28 *infra*.

[20] *See* 47 C.F.R. § 80.179, which allows unattended operation only when using DSC or in association with an AMTS. We are also proposing to amend several rule sections which impose unnecessary technological limitations on public coast stations which elect to provide automated service.

[21] Commenters disagree on whether the DSC protocol can extract necessary billing information. Although field testing of the protocol will eventually resolve this dispute, this point may be moot in view of our proposal to permit any "open" protocol on non-distress channels.

[22] *See NOI* at ¶ 26.

[23] Comments on this subject were filed by MMR, the Ohio River Company (ORCO), MTC, NMEA, RTCM, SEA, KFS and ECONZ.

[24] *See* KFS comments at 10-11 and RTCM comments at A-10.

[25] *See* MTC comments at 13-14, NMEA comments at 7-8 and MMR comments at 11.

[26] The technical requirements for NB-DP are contained in CCIR Recommendations 476 and 625. *See* 47 C.F.R. § 80.219.

sion should permit higher data rates and whether the 100 baud requirement is desirable to ensure system compatibility.

15. Numerous commenters agree that the current 100 baud data rate for NB-DP is slow, thus causing channel congestion and placing an unnecessary economic burden on the maritime community.[27] Additionally, HAL Communications Corporation (HAL), a manufacturer of HF radio data communications equipment, points out that modern data transfer protocols utilize innovative error correction algorithms which are less likely to require inefficient retransmissions under constantly varying ionospheric conditions.[28] Further, according to Pin Oak International, Inc. (POI), operator of a private coast station and two non-commercial vessels, NB-DP utilizes a variation of the Baudot character set, which is shorter than and incompatible with the ASCII character set used by modern personal computers.[29] As the commenters have shown, the current NB-DP protocol is incapable of adequately handling today's maritime traffic because of its slow data rate, inefficient error correction capabilities, and limited character set.

16. The commenters generally agree that there is a need to improve the efficiency of the NB-DP protocol while retaining system compatibility. Three commenters suggest that the Commission retain the current 500 Hz authorized bandwidth, but eliminate requirements which are protocol-specific, such as data rate, data word length, and type of modulation.[30] Within this scheme, any protocol or modulation could be used, so long as the emissions do not exceed the limits set forth in the Commission's rules for NB-DP operations. Five commenters, however, agree that in order to maintain a "common denominator" of system compatibility, any proposed NB-DP operations must be capable of operating in accordance with the current NB-DP system (CCIR Rec. 625).[31] Additionally, POI and SEA maintain that proposed NB-DP operations should allow the full ASCII character set in order to facilitate operation with modern communication software.[32] Further, POI notes that many modern data communication products, such as CLOVER and PACTOR, have the ability to connect calls using station call signs, instead of requiring a Selective Calling (Selcal) number.[33] POI claims that an additional application must be filed with the Commission in order to obtain a NB-DP Selcal number. Therefore, POI requests that the Commission permit the use of call signs with NB-DP, instead of requiring that each user obtain a Selcal number.[34]

17. We agree with the commenters that relaxing NB-DP regulations should allow more advanced and efficient communication modes to evolve. We believe, however, that there is a need for a "common denominator" to ensure system compatibility. Therefore, we propose to permit NB-DP utilizing any data communications protocol, character set, data rate, and data word length, so long as the emissions meet the requirements set forth in 47 C.F.R. §§ 80.205, 207, 209, and 211(f). These minimum requirements should provide the flexibility needed to promote spectrally efficient, high speed data transfer on NB-DP channels. In addition, we propose that all NB-DP equipment be capable of, but not limited to, operation in accordance with CCIR Rec. 625.

18. Regarding POI's request to eliminate the need for a Selcal number in order to utilize NB-DP, we believe that such a change would degrade marine service compatibility. A Selcal number can be requested when making application for a ship station or coast station authorization. We do not dispute that advanced protocols may be capable of handling call signs. We must provide, however, compatibility with the current system which does not have the capacity to transfer call signs.[35] Therefore, we will continue to require each station participating in NB-DP to obtain a Selcal number.

19. In summary, we propose to allow expanded NB-DP operations by permitting the use of advanced data communication protocols, so long as such use meets the requirements set forth in 47 C.F.R. §§80.205, 207, 209, and 211(f). Further, all NB-DP equipment must be capable of, but not limited to, operation in accordance with CCIR Rec. 625.

D. Private Carriers and Exclusivity

20. In the *NOI*, we asked whether private coast stations should be allowed to serve as private carriers, drawing an analogy to the land based Specialized Mobile Radio Service. We also asked whether private coast stations should be allowed exclusive use of maritime channels.[36] Commenters oppose exclusivity and private carriers because of the limited number of channels, the need for universal accessibility, and the safety characteristics of the maritime service. The only commenter who supports exclusivity and private carriers relied on a presumption that additional channels would be made available.[37] While these arguments are not conclusive, they are persuasive, and they reflect a general opposition to private carriers and exclusivity in the maritime service. Moreover, amendments to the Communications Act after we adopted the *NOI* raise additional issues that were not present when we first considered proposing this private carrier service.[38] As such, we will not consider the private carrier and exclusivity questions in this proceeding. At a later date we may revisit these issues if changes in technology and communications patterns warrant such action.

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[27] *See* KFS comments at 7, SEA comments at 8, NMEA comments at 6, MMR comments at 8 and USCG reply comments at 1.

[28] *See* HAL comments at 3.

[29] *See* POI comments at 18.

[30] *See* HAL comments at 5, KFS comments at 7 and SEA comments at 8.

[31] *See* KFS comments at 7, MMR comments at 8, NMEA comments at 6, RTCM comments at 7 and USCG reply comments at 1.

[32] *See* POI comments at 18 and SEA comments at 8.

[33] Selcal numbers are used for automatic identification of NB-DP transmissions and are assigned by the Commission.

[34] *See* POI comments at 22.

[35] CCIR Rec. 625 was developed to utilize five digit Selcal numbers, not call signs which are a combination of characters and digits. Because we propose to require each NB-DP station to be capable of operation in accordance with, but not limited to, CCIR Rec. 625, each NB-DP station must have a Selcal number.

[36] *See NOI* at ¶ ¶ 21-22.

[37] In opposition to private carriers and exclusivity are MMR, NMEA, KFS and ACBL/WATERCOM. Supporting these concepts is RTCM. SEA notes that there are potential uses for both private carriers and exclusivity, but has reservations about both.

[38] *See* 47 U.S.C. § 332 (1994).

E. Permissible communications

21. In the *NOI*, we noted that in 1986 the Commission declined to adopt rules that would have permitted VHF public coast stations to serve vehicles on land on a subsidiary basis.[39] Since that time, however, the Commission has granted several waivers, allowing individual public coast stations to serve land vehicles on a secondary basis, and has received no complaints of harmful interference to marine communications.[40] As we stated in the *NOI*, allowing public coast stations to serve land mobile vehicles benefits the maritime community, as some of these stations may have ceased operations had they not been able to supplement their revenues by providing land mobile service. Further, such subsidiary communications increase spectrum efficiency by allowing public coast stations to utilize excess capacity to operate under their station licenses. In the *NOI*, we sought comment on amending the rules to allow public coast stations to serve land mobile users on a secondary basis.

22. Eight commenters[41] are uniformly in favor of allowing public coast stations to serve land mobile vehicles, though several stress that such service must remain strictly secondary to maritime uses. For instance, RTCM points out that priority of marine communications can be insured, even in the automated mode, by using protocols which are capable of differentiating between and giving priority to certain groups of users.[42]

23. Accordingly, we propose to permit all public coast stations to provide service to land vehicles, under their current coast station license, on a secondary basis. Transmitters installed in these vehicles must be type accepted for use within the VHF band in either the Maritime Services (Part 80), the Private Land Mobile Services (Part 90), or the Public Mobile Service (Part 22). Additionally, while operating under the coast station's license, such transmitters must operate only on the public correspondence channels authorized for use by the associated public coast station. Further, vehicle identification must consist of the public coast station's call sign, followed by a numeric or alphabetic unit identifier assigned by the associated coast station. Such subsidiary service must cease immediately upon written notice by the Commission that the station is causing harmful interference to marine communications.

24. In all cases, maritime users are to have priority over land mobile users. Public coast stations, electing to serve land mobiles, that use automatic interconnection will be required to distinguish between maritime users and land mobile users, and provide priority to maritime users. Additionally, we propose that Automated Maritime Telecommunications System (AMTS)[43] stations be allowed to provide land mobile service under the same conditions. Finally, we are proposing that the channel loading requirements specified in Section 80.371(c) of the Commission's Rules be amended to remove the showing required for a licensee to obtain additional marine VHF channels. While this rule's purpose is to prevent channel warehousing, we believe it is out-of-date in light of the burdensome procedures required, and the fact that it based on the antiquated notion that public coast stations need only one or two channels to serve their market competitively. We, therefore, request comment on our proposal to remove the showing requirement. Specifically, should we replace the showing requirement with a less burdensome anti-warehousing measure, *e.g.*, an applicant may request up to five channels at a time, where available, but may not receive additional channels until the lesser of either five channels or all VHF channels licensed to the applicant, in the area where it seeks additional channels, are constructed and operating?

F. Intra-service frequency sharing

25. In the *NOI*, we noted that the number of public coast stations operating in the 2-4 MHz, medium frequency (MF) band has decreased by 25% since 1989, while private coast stations are experiencing substantial frequency congestion in the MF band.[44] We asked whether the Commission should permit private coast stations to use public correspondence frequency pairs in the MF band.[45] Four commenters support such intra-service sharing in the MF band as a way to relieve private coast station frequency congestion and extend the scope of private communications.[46] NMEA, RTCM and KFS support the idea of eliminating the public/private coast station distinction for licensing the channels available for coast stations in the MF band.[47] MMR and ACBL/WATERCOM agree that this is feasible for the 2 MHz band, but state that the 4 MHz band is too crowded to allow private coast stations to use the public coast station frequencies.[48]

26. Additionally, we noted in the *NOI* that, of the 42 channels available to boaters in the VHF band, in most areas only six are allocated to noncommercial operations, *i.e.*, pleasure craft. Because of the recent dramatic increase in the number of pleasure boats equipped with VHF maritime radios we requested comments on the feasibility of removing the distinction between commercial and noncommercial operations. NMEA, RTCM, KFS and SEA support eliminating the commercial/non-commercial distinction in the allocation of VHF frequencies.[49] ACBL/Watercom advocates maintaining the distinction be-

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[39] *See* PR Docket No. 86-2, 1 FCC Rcd 1312 (1986) (*Report and Order*). The Commission found that conditions in the VHF public coast station market, at that time, were not sufficiently homogeneous to permit such service nationwide.

[40] *See, e.g., In the matter of Request for waiver of Section 80.453 of the Rules to permit public coast station WHU247 to serve mobile vehicles on land,* 6 FCC Rcd 4846 (1991), *In the Matter of Global Communications, Inc.*, 7 FCC Rcd 2238 (1992) and *In the Matter of Custard, Inc. Request for waiver of Section 80.453 of the Rules to permit public coast station KFN to serve mobile vehicles on land,* 7 FCC Rcd 4515 (1992).

[41] Comments in support filed by MTC, NMEA, MMR, RTCM, SEA, KFS, ORCO and ACBL/WATERCOM.

[42] *See* RTCM comments at A-9.

[43] An AMTS is an automatic, integrated and interconnected maritime communications system serving ship stations. The AMTS provides voice and data public correspondence service to the maritime community similar to that provided by landline telephone systems on specific frequencies allotted to the AMTS.

[44] *See NOI* at ¶ 24.

[45] Currently, the rules allocate forty-three radiotelephony frequency pairs to public coast stations and only ten frequency pairs to private coast stations in the 2-4 MHz band.

[46] *See* NMEA comments at 7, RTCM comments at A-9, KFS comments at 9 and MMR comments at 10.

[47] NMEA Comments at 7, RTCM comments at A-9 and KFS comments at 9.

[48] *See* MMR Comments at 10 and Watercom comments at 8.

[49] *See* NMEA comments at 7, RTCM comments at A-9, KFS comments at 9 and SEA comments at 10.

cause commercial operators often carry dangerous cargo and operate in hazardous conditions where interference by non-commercial vessels could affect safety.[50]

27. In light of the comments received, we propose to permit private coast stations to apply for unassigned public coast station frequency pairs in the 2 MHz band, but not in the 4 MHz band. We welcome data on congestion in the 4 MHz band, to help us decide whether to eliminate the public/private distinction entirely for MF channel assignments, or to maintain the distinction as it currently stands. In the VHF band, we propose to abolish the commercial/non-commercial categories and replace them with a single "Vessel Operations" category. Our proposal reserves certain existing categories such as port operations and intership safety, but otherwise allow any vessel to use VHF frequencies in the Vessel Operations category. We believe that this proposal will reduce channel congestion and increase flexibility in the VHF band by redistributing radio traffic on a regional basis. We appreciate ACBL/Watercom's safety concerns, however, and specifically request comments on the proposed rules and the following two questions:

a) Should single channels be designated for specific regional needs, such as towing operations?

b) What impact, if any, will this proposal have on the safety of commercial operations?

G. Trunking

28. In the *NOI*, we asked whether the Commission should propose rules to facilitate trunking on maritime service channels.[51] Additionally, we requested comments on the number of channels needed to support trunking and whether a standard protocol should be required. Each of the eight commenters who addressed the topic generally support trunking as a means to decrease congestion on public correspondence channels.[52] A majority of the commenters agree, however, that there are not enough channels available in all regions to support trunked systems. Further, some of the commenters claim that the Commission would have to realign public correspondence channels on a regional basis in order to facilitate trunking. Finally, comments are divided regarding the necessity of a standard trunking protocol. Because of the diversity of the comments, we believe that more specific information is needed. The ramifications of allowing trunking in the marine VHF band are too nebulous for us to propose specific rules at this time. Nonetheless, we agree with the commenters that trunking may be a means to decrease congestion on public correspondence channels. We request specific comment on the following questions.

a) What is the minimum number of channels needed to support trunking? What assumptions are used to arrive at this figure?

b) What are the advantages and/or disadvantages of obtaining additional channels for trunking through: i) regional realignment, ii) requiring narrowband equipment, and iii) interservice sharing?

c) What are the advantages and/or disadvantages of permitting public coast stations to implement trunked systems which use proprietary communication protocols?

H. Narrowband

29. In the *NOI* we requested comment on whether we should consider the use of 12.5 kHz narrowband FM (NBFM) and other analog or digital narrowband modulation techniques to increase spectrum efficiency. Additionally, we noted that the U.S. intended to submit a draft report and draft recommendation to the International Telecommunication Union's Radiocommunication Study Group 8 (ITU-R, SG8)[53] suggesting the use of 12.5 kHz channel spacing in the VHF maritime band. Our recommendation that 12.5 kHz NBFM be adopted internationally was not accepted. A draft New Recommendation, however, was adopted by ITU-R, SG8, suggesting that 12.5 kHz channel spacing could be used as an interim measure to relieve congestion in areas where additional channels are needed immediately. All commenters except one support the implementation of 12.5 kHz NBFM.[54] Because of the large number of issues which surround its proposed implementation, however, we will consider this matter in a separate proceeding.[55]

I. Maritime Mobile Sharing of Private Land Mobile Frequencies

30. Another option discussed in the *NOI* to reduce congestion in the maritime services was inter-service sharing with the Private Land Mobile Radio Services. We noted that a number of VHF channels which are allocated to the maritime services internationally are allotted in the United States for private land mobile operations and that sharing appears possible. As a result, we asked whether the Commission should permit marine users to share certain of these frequencies and, if so, how the sharing should be accomplished.

31. Four commenters, all representing entities in the maritime services, support marine sharing of private land mobile VHF band frequencies.[56] For example, RTCM states that sharing these frequencies may help decrease the chan-

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[50] *See* ACBL/WATERCOM comments at 7-8.

[51] Trunking is the generic term for any computerized technology that permits groups of channels to be shared dynamically by many users, resulting in more efficient use of the spectrum. When an end user wants a channel, a computer controlled trunking system selects an unused channel from among those allocated to the system and assigns it to the end user. In general, greater efficiency is realized as the number of trunked channels increases.

[52] Comments were filed by GMCSI/REC, KFS, MTC, NMEA, RTCM, and SEA. Reply comments were filed by ECONZ and MTC. Commenters addressed the trunking of only public correspondence channels.

[53] *See* ITU-R Document 8B/TEMP/40-E, November 2, 1993.

[54] GMSCI/REC, KFS, MMR, NMEA, ORCO, RTCM, and SEA filed comments. ECONZ and USCG filed reply comments. SEA claims that, based on experience with narrowband land mobile equipment, amplitude-compandored single-sideband (ACSB) technology, using 5 kHz channel spacing, would offer better performance than NBFM equipment. *See* SEA comments at 10.

[55] NMEA has informally agreed to form a special committee to propose standards for NBFM marine VHF equipment.

[56] *See* KFS comments at 11, NMEA comments at 9, RTCM comments at 12 and SEA comments at 11.

nel congestion which exists in the VHF marine band.[57] The Association of American Railroads (AAR), however, strongly objects to any proposed sharing of railroad frequencies. AAR claims that there are no substantive regions along the United States coastline where railroad frequencies are not used.[58] Additionally, AAR contends that major port cities, where marine channels are congested, are also major rail centers where sharing would not work.[59] Finally, AAR argues that, because railroad frequencies are often used to coordinate the movement of heavy equipment and passengers on trains traveling at high speeds, harmful interference would jeopardize railroad safety.[60]

32. As we stated in the *NOI*, more and more Americans are learning about the benefits of mobile radio every day. This growing demand for mobile communications has carried over to the maritime area. This coupled with the continuing increase in the number of recreational and other vessels has led to major congestion problems. Ideally, we could address frequency congestion problems in each of the private radio services solely through additional regulatory flexibility in-service, and by facilitating the development and use of new, spectrally efficient technology. These measures alone, however, have not resolved channel congestion. In the past, we have taken additional steps to alleviate congestion such as interservice sharing. In a companion item, for example, we allow certain private land mobile entities (most Industrial and Land Transportation eligibles, including railroads and motor carriers) to share 400 kHz of maritime spectrum in geographic areas where it is not being used by maritime eligibles.[61]

33. Interservice sharing has successfully increased spectrum-use efficiency in the past and we find nothing in the comments to indicate that on a limited and carefully coordinated basis it will not work here. We propose, therefore, to allow maritime users to share 400 kHz of private land mobile spectrum, 200 kHz from the Railroad Radio Service[62] and 200 kHz from the Motor Carrier Radio Service.[63]

34. To protect land mobile operations, we propose to make most of the frequencies available only to public coast stations for paired, duplex operations.[64] We are additionally proposing to permit intership, low power operations on three frequencies.[65] Further, we propose to use the same co-channel separation criteria that we adopted for land mobile sharing of maritime spectrum.[66] This should provide sufficient protection to railroad operations. Likewise, to provide protection to motor carrier operations we will require maritime operations on these channels (coast stations) to be located at least 80 km (50 miles) from a co-channel motor carrier base station.[67] In summary, the proposed rules would permit public coast stations to share certain private land mobile frequencies when located at least 80 km (50 miles) from co-channel motor carrier base stations and when meeting the minimum separation from co-channel railroad base stations.[68]

35. Until we gain more experience with this sharing arrangement, we propose to limit public coast stations operating on these frequencies to locations within 16 km (10 miles) of the U.S. coast line or any navigable waterway. Finally, we propose to permit use of the frequencies 12.5 kHz offset from the proposed shared frequencies as provided in the proposed rules. We request specific comment on the proposed separation requirements and the assumptions used to arrive at the proposed minimum separation matrix.

J. AMTS Channels

36. The Commission reallocated one megahertz of spectrum from the AMTS to a new Interactive Video and Data Service (IVDS).[69] This action effectively "orphaned" the 216-217 MHz band by taking away the channels that had been paired with this band. We requested suggestions for new uses of this band and noted that proposed uses must not cause harmful interference to Television (TV) Channel 13. We are proposing rules to permit use of this band in a separate, companion item.[70]

K. HF Automatic Link Establishment (ALE)

37. On November 22, 1993, BR Communications (BR) submitted a letter[71] requesting that, as part of the Commission's effort to update the maritime rules, Parts 80 and 87 of the Commission's rules, 47 C.F.R. Parts 80 and 87, be

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[57] *See* RTCM comments at 12.

[58] Attached to its comments, AAR submitted a map showing the location of all railroad base stations in the 48 contiguous states. *See* AAR comments at Exhibit 1.

[59] *See* AAR comments at 3.

[60] *See* AAR comments at 5.

[61] *See First Report and Order*, PR Docket No. 92-257, __ FCC Rcd _____ (1995).

[62] From 161.3625 to 161.5625 MHz.

[63] From 159.4875 to 159.6875 MHz.

[64] In this duplex arrangement, public coast stations will call ship stations on railroad service frequencies and ship stations will call public coast stations on motor carrier frequencies.

[65] 159.550 MHz, 159.575 MHz, and 159.600 MHz (motor carrier frequencies).

[66] *See First Report and Order*, PR Docket No. 92-257, __ FCC Rcd _____, at ¶ ¶ 9-11 (1995). We are proposing a matrix which defines the minimum separation required between a public coast station and any co-channel railroad base stations, based on the coast station's transmitter power and antenna height. We note, however, that the distances in the matrix were calculated assuming that an average railroad base station operates with 100 W ERP at 122 meters (400 feet) above average terrain, which may be too conservative.

[67] Because the Railroad and Motor Carrier frequencies correspond to the proposed coast station base and mobile frequencies respectively, two different types of separation criteria are needed. The separation matrix serves to govern base-to-base transmissions, while the fixed, 80 km limit is intended to prevent harmful interference from marine mobiles to Motor Carrier base stations.

[68] Because the 25 kHz maritime channels and 15 kHz land mobile channels in question are not aligned, maritime operation within the authorized land mobile bandwidth is considered co-channel. For example, coast station operation on 161.525 MHz, for the purposes of this proposal, is considered co-channel to railroad operation on both 161.520 MHz and 161.535 MHz.

[69] *See Report and Order* in GEN Docket 91-2, 7 FCC Rcd 1630 (1992). The automated maritime telecommunications system (AMTS) uses duplex channel pairs and formerly was allocated 80 such pairs divided up into 4 groups of 20 each, labelled A,B,C and D. One half of Groups C and D was reallocated to IVDS in GEN Docket 91-2. *See also Memorandum Opinion and Order* in GEN Docket 88-372, 7 FCC Rcd 3607 (1992).

[70] *See Notice of Proposed Rule Making*, WT Docket No. 95-__, __ FCC Rcd _____ (1995).

[71] BR's letter, which contained technical information regarding ALE and proposed rule modifications, was treated as a

amended to permit the use of linear frequency modulated continuous wave (FMCW) modulation technology for the purpose of Automatic Link Establishment (ALE) in the marine and aviation HF frequency bands.[72] BR argues that, because of the inherent variability in ionospheric propagation, highly trained operators are often needed to establish and maintain HF communication links. BR claims that ALE systems can minimize connect time by measuring the quality of each possible link and choosing the best available channel. The petitioner further states that ALE systems retain a memory of other viable channels and are able to switch frequencies as the current link deteriorates. In this manner, BR maintains that an untrained operator can quickly establish and maintain an HF link using an ALE-equipped transmitter.[73]

38. The petitioner proposes that ALE operation occur in the 2-30 MHz band, allowing a station's FMCW signal to occupy each channel within the band for approximately 30 milliseconds, four times per hour, in order to determine channel quality. BR claims that the FMCW signal will normally be limited to 10 Watts effective radiated power (ERP) and will not cause harmful interference to communication within the HF band. Additionally, BR notes that since 1966, ALE systems of this type have been successfully utilized by the military world-wide, with no resulting interference complaints.[74] In support of BR's proposal, RTCM argues that ALE can be utilized without adversely affecting current HF communications.[75]

39. We agree that permitting the use of spectrally-efficient, state-of-the-art communication techniques, such as ALE within the HF band, is in the public interest. Therefore, we propose to permit the use of brief FMCW signalling in the 2-27.5 MHz band under Parts 80 and 87 of the Commission's rules for the purpose of ALE. Such transmissions, however, must not occur on distress, safety, or time-standard frequencies within the band.[76] Further, we request specific comment regarding the proposed rules and the following questions:

a) Is FMCW signalling the only way to implement HF ALE? What other methods are currently used?

b) If other ALE modulation techniques exist, should several be allowed or should the Commission mandate a standard modulation?

c) What specifications should be mandated to ensure that ALE will not cause harmful interference to communications in the HF band?

d) Although brief FMCW signalling may be tolerable on voice channels, will such signalling be detrimental to data communications in the band? Should channels designated for facsimile, radioprinting, or data communications be protected in the same way as distress frequencies?

e) Minimum ALE capabilities could include automatic signalling and response, selective calling, analysis of channel quality, link maintenance, data transfer, error checking, etc. Should the Commission mandate minimum ALE requirements, and if so, which ones?

L. Ship-to-Ship and Ship-to-Private Coast Station Facsimile

40. We received a Petition for Rule Making (RM 8352) from Alaska Commercial Electronics (ACE) that requested amendment of the Maritime Service Rules to allow the transmission of facsimile signals over ship-to-ship and ship-to-private coast station VHF channels.[77] The rules currently allow facsimile transmissions over VHF public correspondence channels,[78] and ACE proposes that such a service would be valuable in ship-to-ship and ship-to-private coast station applications. Eight commenters responded to the petition, all supporting the idea.[79] Commenters list a number of reasons why facsimile services would benefit the maritime community; among them are the provision of maps showing weather and ice conditions, speeding up the transmission lists such as grocery and supply orders, providing hard copies of information such as commercial docking and unloading schedules, and making maritime radio communications available to persons with hearing or speech impairments.

41. In light of the comments received, we propose to permit facsimile transmissions on a single VHF channel for ship-to-ship and ship-to-private coast station use. Because all the comments to the Petition for Rule Making came from Alaska, and because of the unique dependence of Alaska on maritime transportation, we propose to authorize this service initially in Alaska only. In accordance with the ACE petition, we will require all facsimile transmissions to follow the same technical requirements as marine VHF voice radio. We have selected marine VHF channel 68 (156.425 MHz) as the frequency for facsimile operations. To reduce our administrative burden and expedite the effect of our rule change, we propose to add this channel to all current Alaskan private coast station authorizations, for facsimile transmissions only, without requiring each licensee covered to modify its authorization. Under this proposal, private coast stations which are currently authorized to use channel 68 would be permitted to transmit both voice and facsimile. Vessels may continue to use public correspondence frequencies for facsimile communications with public coast stations.

42. We seek specific comment on this proposal and request that commenters address the following questions.

a) Should the Commission allow facsimile emissions via private coast stations throughout the rest of the United States?

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comment to this proceeding. *See* letter from Mr. Henry Goldberg on behalf of BR Communications, to Mr. William F. Caton, Acting Secretary, Federal Communications Commission, Washington, DC (November 22, 1993).

[72] ALE refers to the use of a scanning transceiver to establish and maintain a radio link.

[73] *See* BR cover letter at 2-3.

[74] *See* BR cover letter at 3 and petition at 3.

[75] *See* RTCM comments at A-3.

[76] *See* proposed rules §§ 80.229 and 87.149 in Attachment B.

[77] *See* ACE, *Petition for Rule Making* at 1 (August 10, 1993).

[78] *See* 47 C.F.R. § 80.363(b).

[79] Comments in support were filed by ACE; Griffith Marine Navigation, Inc.; the Petersburg Charter Boat Association; Alaskan Star Charters; Mr. Cam Tulloch; Mr. Spencer T. Ellsworth; the Alaska Governor's Council on Disabilities and Special Education and the University of Alaska.

b) Should other types of data transmissions be permitted in addition to facsimile, so long as the emissions do not exceed the authorized radiotelephone channel bandwidth?

c) Would a single VHF channel, set aside exclusively for facsimile/data transmissions, be capable of handling anticipated traffic? Would this type of allocation efficiently use the marine spectrum?

d) Alternatively, what would be the advantages and/or disadvantages of permitting facsimile/data transmissions on the same channels as voice communications?

e) The type of arrangement mentioned in (d) has worked successfully in the past at public coast stations, where the per minute charges have apparently curbed congestion. Should certain restrictions, such as time limits or silence periods, be placed on facsimile/data transmissions to and from private coast stations?

M. Other Issues

43. *Coast Station Operator Licensing.* MMR, KFS and ACBL/WATERCOM urge us to eliminate the requirement that coast station telephone operators hold commercial radio operator licenses. KFS states that the rules for coast station operators were developed before computers and remote operated transmitters were common, and that today knowledge of computer operations is more important than radio knowledge for coast station operations.[80] MMR and Watercom point out that the international Radio Regulations do not require licensed operators for coast stations, and that the Commission has rescinded rules which permitted only licensed operators to maintain and adjust transmitters in the public mobile, private land mobile, private operational-fixed microwave, and personal radio services.[81]

44. In light of the comments received and Commission actions with regard to operator requirements in other services, we propose to eliminate the requirements for coast station telephone operators to hold commercial operator licenses. Currently, coast stations transmitting radiotelephony that have 250 watts or less carrier power operating above 30 MHz, and coast stations that have 250 watts or less carrier power operating below 30 MHz in Alaska, require no operator licenses.[82] We propose to remove the requirement for licensed operators at all other coast stations when transmitting radiotelephony. Operator requirements at public coast stations transmitting radiotelegraphy, however, will remain as currently stated in the rules.

45. *Ship Station Licensing.* RTCM argues that a ship station license does not automatically authorize the use of each class of emergency position indicating radio beacons (EPIRBs) and that licensees have to submit an application to modify their license upon purchase of a new class of EPIRB. RTCM suggests that the license automatically cover every type of EPIRB.[83] The USCG concurs with RTCM's comments.[84] We agree with RTCM's suggestion and have proposed such a change to the rules. Additionally, we are proposing that the ship station license be modified to permit recreational boaters to operate on MF, HF, VHF and radar frequencies that are available to them.[85] Further, we are proposing a ninety-day grace period for renewal of ship station licenses and aircraft station licenses.[86] We request specific comment on these proposals.

46. *Posting of Certain Ship-Station Licenses.* The United States Coast Guard (USCG) asks that we modify our ship-station license posting rule.[87] Section 80.405(c), 47 C.F.R. § 80.405(c), requires ship-station licensees to post their Commission license, or a copy, at the principal control point of their station. The USCG points out, however, that smaller commercial and recreational vessels often do not have enclosed pilot houses; posting the license at the control point, therefore, subjects it to the elements, making the document unreadable. We agree with the USCG that this defeats the purpose of the rule and propose, therefore, an alternative posting requirement for vessels that do not have a weather-tight pilot house. For these stations, we will require the licensee to keep the license on-board, available immediately upon request. We ask for comments on this proposal; specifically, how we should define the types of vessels eligible to use the alternative rule, and whether we should open the proposed alternative to all vessels.

47. *Frequency Tolerance.* Marine VHF transmitters that are used at coast stations must meet a frequency tolerance of 5 parts per million (ppm), while ship station transmitters are required to meet 10 ppm. We believe that the 5 ppm frequency tolerance may be too restrictive for private coast stations that operate with low power. Further, the international Radio Regulations are less restrictive and permit a frequency tolerance of 10 ppm for both coast and ship station operations. We propose to permit private coast stations that operate at less than 25 watts carrier power to use transmitters with a frequency tolerance of 10 parts in 106.

48. *Associated Coast Station Units.* Private coast stations provide a myriad of services to the maritime industry including towing and docking services. Currently, however, the only way for private coast stations to use hand-held radios legally is to obtain a marine utility station license in addition to the private coast station license. We believe this to be an unnecessary requirement which costs the ap-

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[80] *See* KFS reply comments at 1.

[81] *See* MMR comments at 12 and ACBL/WATERCOM comments at 9.

[82] *See* 47 C.F.R. § 80.153.

[83] *See* RTCM comments at A-12. Currently, an applicant for a ship station license must request authorization for each class of EPIRB he/she plans to use during the license term. Although the applicant may request authorization for all three classes of EPIRBs listed on the application, most boaters only request authorization for equipment which they currently own and do not anticipate upgrades.

[84] *See* USCG reply comments at 2.

[85] Ships required by law or regulation to carry radio equipment will continue to be required to request specific frequencies on their ship station applications, in order to ensure carriage of the proper equipment.

[86] We are not proposing to extend the station license period by ninety days. Rather, we are proposing to extend the period in which a licensee may renew his/her license, retaining the same call sign. Operation under an expired license during the grace period is not permitted unless such application is filed.

[87] *See* April 8, 1994, letter from E.J. Williams III, Chief, Marine Safety Division, USCG (by direction of the District Commander) to George Dillon, Chief, Aviation and Marine Branch, Federal Communications Commission. We are making this letter part of the record in PR Docket No. 92-257.

plicant an additional $70 license fee and does not enhance spectrum management or aid enforcement efforts. We propose to authorize the use of a limited number of hand held maritime radios by private coast station licensees, termed "associated coast station", in a fashion analogous to the operation of associated ship stations.[88] The associated coast station will be limited to the frequencies, communications services and the service area authorized by the private coast station license. We seek comment on whether associated coast stations should be permitted, limitations as to the number of hand held units which may be used in association with a private coast station license, limitation on the permissible power of associated coast station units, and other restrictions which may be necessary to ensure that associated coast station units do not cause harmful interference or increase channel congestion.

N. Summary

49. We believe in the principle that government should be responsive to user needs and began this proceeding to review thoroughly the present requirements and future trends concerning maritime communications, to allow new technology, promote flexibility, remove unnecessary and inimical regulations and, most importantly, provide better service to the public. We are proposing, therefore, broad changes to the current rules and request comments on these proposals.

IV. PROCEDURAL MATTERS

INITIAL REGULATORY FLEXIBILITY ANALYSIS

50. An Initial Regulatory Flexibility Analysis is contained in Appendix A to this *Further Notice*.

51. Accordingly, we adopt this *Further Notice* under the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r). Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. Sections 1.415 and 1.419, interested persons may file comments on or before **September 22, 1995**, and may file reply comments on or before **November 21, 1995**. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you should file an original and nine copies. You should send your comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Reference Center of the Federal Communications Commission (Room 239), 1919 M Street, N.W., Washington, D.C. 20554.

52. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. *See generally* 47 C.F.R. §§ 1.1202, 1.1203, and 1.206(a).

53. For further information, contact Roger Noel,Wireless Telecommunications Bureau, Federal Communications Commission, 2025 M Street, N.W., mail stop 1700C2, Washington, D.C. 20554; telephone 202-418-0680.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Attachments

APPENDIX A

INITIAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals contained in this *Further Notice*. We request written public comment on the IRFA, which follows. Comments must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines provided in paragraph 51, *supra*. The Secretary shall send a copy of this *Further Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. §§ 601-612 (1981).

A. Reason for Action

2. The Commission proposes to 1) allow public coast stations to install equipment which will provide automatic interconnection between marine radios and the public switched telephone network, 2) authorize intra-service sharing of certain maritime frequencies by eliminating the public/private coast station distinction in the MF band and the commercial/non-commercial distinction in the VHF maritime band, 3) permit public coast stations to serve land vehicles on a secondary basis, 4) impose a minimum Digital Selective Calling requirement on future marine radios, 5) relax restrictions on narrow-band direct printing to take advantage of advances in technology, and 6) allow maritime sharing of certain Private Land Mobile frequencies.

B. Objectives

3. We seek to 1) remove restrictions on maritime communications which have caused uneven use of marine communications channels, 2) promote efficiency and competitiveness for marine coast stations, 3) make better use of currently unused or underused portions of the spectrum, and 4) take advantage of new technologies in maritime communications.

[88] *See* 47 C.F.R. § 80.5.

C. Legal Basis

4. The proposed action is authorized under Sections 4(i) and 303(r) of the Communications Act, 47 U.S.C. §§ 154(i) and 303(r).

D. Reporting, Recordkeeping and Other Compliance Requirements

5. Our proposed amendment to 47 C.F.R. § 80.405(c) would provide certain licensees with an alternative method to meet a current license-posting requirement.

E. Federal Rules Which Overlap, Duplicate or Conflict with These Rules

6. None.

F. Description, Potential Impact, and Small Entities Involved

7. Inter- and intra-service sharing of frequencies would allow better utilization of the radio spectrum, reduce congestion in the most crowded parts of the marine radio spectrum. Allowing automatic interconnection to the PSTN and service of land vehicles from public coast stations would allow public coast stations, many of which are small businesses, to compete more efficiently in the communications marketplace. Requiring marine radios to be equipped with minimum DSC capability and relaxing NB-DP restrictions would take advantage of advances in technology to increase efficiency in spectrum use.

G. Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives

8. None.

APPENDIX B

PROPOSED RULES

Chapter I of Title 47 of the Code of Federal Regulations, Parts 2, 80, 87, and 90 are proposed to be amended as follows:

Part 2 - FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1.The authority citation for Part 2 continues to read as follows:

AUTHORITY: Secs. 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 154(i), 302, 303, 303(r), and 307, unless otherwise noted.

2. Section 2.106 is amended by adding a new maritime mobile entry and a new non-government footnote number 155 to the Non-Government Allocation, United States table (column 5) for the frequency band 158.115-161.575 MHz to read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

United States Table		FCC Use Designators
Government	Non-Government	Rule Part(s) (6)
Allocation MHz (4)	Allocation MHz (5)	
* * * * *	158.115-161.575 LAND MOBILE NG6 MARITIME MOBILE 613 NG6 NG28 NG70 NG112 NG124 NG148 NG155	* * * * *

NON-GOVERNMENT (NG) FOOTNOTES

* * * * *

NG155 The bands 159.500-159.675 MHz and 161.375-161.550 MHz are allocated to the maritime service as described in Part 80 of this chapter. Additionally, the frequencies 159.550, 159.575 and 159.600 MHz are available for low-power intership communications.

* * * * *

Part 80 - Stations in the Maritime Services

1. The authority citation for Part 80 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.5 is amended by removing the definitions titled Commercial communications and Noncommercial communications and adding in alphabetical order the following definitions to read as follows:

§ 80.5 Definitions.

* * * * *

Associated coast station unit. A portable VHF transmitter used to serve the operational and business needs of ships and private coast stations with which it is associated.

* * * * *

Vessel operations communications. Communications between coast stations and ship stations or between ship stations which relate to the purposes for which the ships are used or to the needs of the ships.

* * * * *

3. Section 80.13 is amended by adding a new paragraph (c) to read as follows:

§ 80.13 Station license required.

* * * * *

(c) Voluntary ship station licenses will authorize the use of the MF, HF and VHF radiotelephone band, all Classes of EPIRBs, and ship radar stations.

4. Section 80.25 is amended by revising paragraphs (a) and (b) to read as follows:

§ 80.25 License term.

(a) Licenses for ship stations in the maritime services will normally be issued for a term of ten years from the date of original issuance, major modification, or renewal. Licensees may apply for renewal of the station license up to ninety (90) days from the date the license expires.

(b) Licenses other than ship stations in the maritime services will normally be issued for a term of five years from the date of original issuance, major modification, or renewal. Licenses, other than Public Coast and Alaska Public Fixed stations, may be renewed up to

ninety (90) days from the date the license expires.

* * * * *

5. Section 80.89 is amended by revising the first sentence of the intrductory portion of paragraph (f) to read as follows:

§ 80.89 Unauthorized transmissions.

* * * * *

(f) Transmit while on board vessels located on land unless authorized under a public coast station license. * * *

* * * * *

6. Section 80.107 is amended to read as follows:

§ 80.107 Operational conditions for use of private coast stations, marine utility stations and associated coast station units.

(a) A private coast station, marine utility station or an associated private coast station unit is authorized to transmit messages for the private business and operational needs of ships and aircraft.

(b) Up to five associated coast station units may be operated under a private coast station authorization under the following conditions:

(1) Except for distress and safety purposes, associated coast station units must use the private coast station's working frequencies;

(2) Associated coast station units must only be used to communicate with the associated private coast station and ship stations within the private coast station's service area;

(3) Power is limited to one watt; and,

(4) The station must be identified by the call sign of the coast station with which it is associated and an appropriate designator.

7. A new Section 80.123 is added under Special Procedures-Public Coast Stations to read as follows:

§ 80.123 Service to vehicles on land.

Marine VHF public coast stations may provide public correspondence service to vehicles on land, on a secondary basis, in accordance with the following:

(a) The public coast station must provide each associated land vehicle with a letter, which shall be presented to authorized FCC representatives upon request, acknowledging that the vehicle may operate under the authority of the associated public coast station's license;

(b) Land vehicle identification shall consist of the associated public coast station's call sign, followed by a unique numeric or alphabetic unit identifier;

(c) Radio equipment installed in the land vehicles must be type accepted for use under Part 22, Part 80, or Part 90 of this chapter. Such equipment must operate only on the public correspondence channels authorized for use by the associated public coast station;

(d) Transmitter power shall be in accordance with the limits set in § 80.215 for ship stations;

(e) Vehicles shall only operate within radio range of their associated public coast station;

(f) The land vehicle must cease operation immediately upon written notice by the Commission to the associated public coast station that the land vehicle is causing harmful interference to marine communications.

8. A new Section 80.133 is added under Special Procedures-Private Coast Stations to read as follows:

§ 80.133 Private coast stations using facsimile in Alaska.

Facsimile techniques may be implemented in accordance with the following paragraphs.

(a) Private coast stations in Alaska are eligible to use facsimile techniques with associated ship stations and other private coast stations in accordance with § 80.505(b) of this Chapter.

(b) The frequency 156.425 MHz is available for assignment to private coast stations in Alaska for facsimile transmissions.

(c) Equipment used for facsimile operations is subject to the applicable provisions of Subpart E of this Part.

9. In Section 80.153 paragraph (b) is amended by revising the entry titled "Coast telephone, all classes:" to read as follows:

§ 80.153 Coast station operator requirements.

* * * * *

(b) * * *

Minimum Operator License

Public coast telegraph, all classes --T-2.

* * * * *

Coast telephone, all classes -- None.

* * * * *

10. Section 80.177 is amended by revising paragraph (c) to read as follows:

§ 80.177 When operator license is not required.

* * * * *

(c) No operator license is required to operate coast telephone stations or marine utility stations.

* * * * *

11. Section 80.179 is amended by revising paragraphs (b), (c) and (d) to read as follows:

§ 80.179 Unattended operation.

* * * * *

(b) Automatic use of a transmitter during narrow-band direct-printing (NB-DP) operations in accordance with § 80.219.

(c) Automatic use of a transmitter during selective calling operations in accordance with § 80.225.

(d) Automatic use of a transmitter when operating as part of the Automated Maritime Telecommunications System (AMTS), an automated multi-station system for which provisions are contained in this Part, or an automated public coast station.

* * * * *

12. Section 80.203 is amended by adding a new paragraph (n) to read as follows:

§ 80.203 Authorization of transmitters for licensing.

* * * * *

(n) All marine MF, HF and VHF transmitters manufactured in or imported into the United States after February 1, 1997, or marketed or installed on U.S. ships or after February 1, 1999, must provide for a minimum DSC requirement in accordance with CCIR Recommendation 493 and 541 as modified by the table below. The following table lists the required minimum DSC capabilities for each class of DSC equipment:

Digital Selective Calling Classification Table

	Class A		Class B		Class C	VHF SC101		HF SC101	
	Tx	Rx	Tx	Rx	Tx	Tx	Rx	Tx	Rx
Format specifier:									
Distress call	X	X	X	X	X	X	X	X	X
All ships call	X	X	X	X	.	X	X	.	X
Selective individual station call	X	X	X	X	.	X	X	X	X
Selective Semi-automatic/automatic service call	X	X	X	X	.	.	.	.	.
Selective call (group of ships)	.	X	.	X	.	.	.	.	.
Selective call (ship in geographic area)	.	X	.	X	.	.	X	.	X
Vessel traffic service call	.	.	.	.	.	.	.	.	.
Numerical identification of the station (address)	X	X	X	X	.	X	.	X	.
Self-identification (automatically inserted)	X	.	X	.	X	X	.	X	.
Frequency or Channel Information (non-distress)	X	X	X	X	.	X	X	X	X
Time and position (for distress call only)	X	X	X	X	.	X	.	X	.
Ships Position Information	X	X	X	X	.	.	.	.	.
Category (call priority):									
Distress	X	X	X	X	.	X	.	X	.
Urgency	X	X	X	X	.	.	.	.	.
Safety	X	X	X	X	.	.	.	X	.
Ship's Business	X	X	.	.	.	.	.	.	.
Routine	X	X	X	X	.	X	.	X	.
(note: except for Class C, all units must be capable of receiving calls of any priority, but need not display that priority if an "X" is not marked)									
Distress categories:									
Undesignated	X	X	X	X	X	X	X	X	X
Fire, explosion	X	X	.	.	.	.	.	.	.
Collision	X	X	.	.	.	.	.	.	.
Grounding	X	X	.	.	.	.	.	.	.
Listing, in danger of capsizing	X	X	.	.	.	.	.	.	.
Sinking	X	X	.	.	.	.	.	.	.
Disabled and adrift	X	X	.	.	.	.	.	.	.
Abandoning ship	X	X	.	.	.	.	.	.	.
EPIRB emission	.	X	.	X	.	.	.	.	.

	Class A		Class B		Class C	VHF SC101		HF SC101	
	Tx	Rx	Tx	Rx	Tx	Tx	Rx	Tx	Rx
Telecommands:									
VHF FM Simplex telephony	X	X	X	X	.	X	X	.	.
VHF FM Duplex telephony	X	X	X	X	.	.	X	.	.
Polling (tracking)	X	X	.	.	.	.	.	.	.
Selection information (telephone number)	X	.	X	.	.	.	.	.	.
Unable to comply:									
No reason given	X	X	X	X	.	X	X	X	X
Congestion at maritime switching center	.	X	.	X	.	.	.	.	.
Busy	X	X	.	X	.	.	.	.	.
Queue indication	.	X	.	X	.	.	.	.	.
Station barred	.	X	.	X	.	.	.	.	.
No operator available	X	X	.	X	.	.	.	.	.
Operator temporarily unavailable	X	X	.	X	.	.	.	.	.
Equipment disabled	X	X	.	X	.	.	.	.	.
Unable to use proposed channel	X	X	.	X	.	.	.	.	.
Unable to use proposed mode	X	X	.	X	.	.	.	.	.
End of call	X	X	X	X	.	.	.	.	.
Emission or type of call:									
Single sideband telephony	X	X	X	X	.	.	.	X	X
Single sideband full carrier telephony	X	X	X	X	.	.	.	.	.
Radiotelex (SITOR) FEC	X	X	.	.	.	.	.	.	.
Radiotelex (SITOR) ARQ	X	X	.	.	.	.	.	.	.
Radiotelex (SITOR) receive only	X	X	.	.	.	.	.	.	.
F1B/J2B other than radiotelex	X	X	.	.	.	.	.	.	.
Recorder Morse Code	X	X	.	.	.	.	.	.	.
Manual Morse Code	X	X	.	.	.	.	.	.	.
Facsimile	X	X	.	.	.	.	.	.	.
Data									
CCITT V.21	X	X	.	.	.	.	.	.	.
CCITT V.22	X	X	.	.	.	.	.	.	.
CCITT V.22bis	X	X	.	.	.	.	.	.	.
CCITT V.23	X	X	.	.	.	.	.	.	.
CCITT V.26bis	X	X	.	.	.	.	.	.	.
CCITT V.26ter	X	X	.	.	.	.	.	.	.
CCITT V.27ter	X	X	.	.	.	.	.	.	.
CCITT V.32	X	X	.	.	.	.	.	.	.

	Class A		Class B		Class C	VHF SC101		HF SC101	
	Tx	Rx	Tx	Rx	Tx	Tx	Rx	Tx	Rx
Distress Acknowledgement	X	X	X	X	.	.	X	.	X
Distress Relay Acknowledgement	.	X	.	X	.	.	X	.	X
Acknowledgement, Able to Comply	X	X	X	X	.	X	X	X	X
Acknowledgement, Unable to Comply	X	X	X	X	.	X	X	X	X
Distress Relay	X	X	X	X	.	.	X	.	X
Test (MF and HF only)	X	X	X	X	.	.	.	X	.
Ship position or location registration updating	X	X	.	.	.	.	.	.	.
No Information (if no telecommand info is sent)	X	.	X	.	.	X	.	X	.
Neutral ships/aircraft in a war zone (RR Res 18)	X	X	.	.	.	.	.	.	.
Medical transport	X	X	.	.	.	.	.	.	.
Pay-phone/public call office	X	X	.	.	.	.	.	.	.
No second telecommand information	X	.	X	.	.	X	.	X	.
Power cutback to 1w on routine VHF all-ship calls	X	.	X	.	.	X	.	.	.

13. In Section 80.205, the table in paragraph (a) is amended by revising the second "J2B" entry to read as follows:

§ 80.205 Bandwidths.

* * * * *

Classes of emission	Emission designator	Authorized bandwidth (kHz)
* * *		
J2B[5].....	300HJ2B	0.5
* * * * *		

[5] NB-DP radiotelegraph and data transmission for communications with public coast stations.

* * * * *

14. In Section 80.207, paragraph (a) is revised and the table in paragraph (d) is amended by revising footnote 1, footnote 2 and adding footnote 13 to read as follows:

§ 80.207 Classes of emission.

(a) Authorization to use radiotelephone and radiotelegraph emissions by ship and coast stations includes the use of digital selective calling and selective calling techniques in accordance with § 80.225.

* * * * *

(d) * * *

Types of stations	Classes of emission

Ship Stations[1]	
Radiotelegraphy:	
* * *	
1605-27500 kHz	
* * *	
NB-DP[13].....	F1B, J2B
* * *	
Land Stations[1]	
Radiotelegraphy:	
* * *	
4000-27500 kHz:	
* * *	
NB-DP[13].....	F1B, J2B
* * *	

[1] Excludes distress, EPIRBs, survival craft, and automatic link establishment.

[2] Frequencies used for public correspondence and in Alaska 156.425 MHz. See §§ 80.371(c), 80.373(f) and 80.385(b). Transmitters type accepted before January 1, 1994, for G3E emissions will be authorized indefinitely for F2C, F3C, F1D and F2D emissions. Transmitters type accepted on or after January 1, 1994, will be authorized for F2C, F3C, F1D or F2D emissions only if they are type accepted specifically for each emission designator.

* * * * *

[13] NB-DP operations which are not in accordance with CCIR Recommendation 625 or 476 are permitted to utilize any modulation, so long as emissions are within the limits set forth in § 80.211(f) of this Chapter.

* * * * *

15. In Section 80.209, the table is amended by adding a new footnote 6 to the entry for 30 to 100 watts in paragraph (a)(5)(i) to read as follows:

§ 80.209 Transmitter frequency tolerances.

(a) * * *

(5) * * *

(i) * * *

3 to 100 watts.....5[6]

* * * * *

[6] For transmitters operated at private coast stations with antenna heights less than 6 meters (20 feet) above ground and output power of 25 watts or less the frequency tolerance is

10 parts in 10^6.
* * * * *

16. In Section 80.211 paragraph (d) is revised to read as follows:

§ 80.211 Emission limitations.

* * * * *

(d) The mean power of emissions from radiotelephone survival craft transmitters, 9 GHz search and rescue transponders, and radiotelegraph survival craft transmitters must be attenuated below the mean output power of the transmitter as follows:

(1) On any frequency removed from the assigned frequency by more than 50 percent, up to and including 100 percent of the authorized bandwidth: at least 25 dB;

(2) On any frequency removed from the assigned frequency by more than 100 percent of the authorized bandwidth: at least 30 dB.

* * * * *

17. Section 80.219, the text is revised to read as follows:

§ 80.219 Special requirements for narrowband direct-printing (NB-DP) equipment.

NB-DP and data transmission equipment installed in ship and coast stations before October 1, 1990, that operates on the frequencies in the 4,000-27,500 kHz bands must be capable of operation in accordance with the technical requirements of CCIR Recommendations 476 or 625. Equipment installed on or after October 1, 1990, must be capable of operation in accordance with the technical requirements of CCIR Recommendation 625. NB-DP and data transmission equipment are additionally permitted to utilize any modulation, so long as emissions are within the limits set forth in Section 80.211(f) of this chapter and the equipment is capable at a minimum of operation in accordance with CCIR recommendation 625.

18. In Section 80.225, the heading is revised, the first sentence in the introductory paragraph is revised, paragraphs (a) and (c)(3) are revised to read as follows:

§ 80.225 Requirements for selective calling equipment.

This section specifies the requirements for optional digital selective calling (DSC) equipment and selective calling equipment installed in ship and coast stations. * * *

(a) DSC equipment voluntarily installed in coast or ship stations must meet the requirements of CCIR Recommendation 493 or § 80.203(n). DSC equipment must not be used with the sensors referred to in § 80.179(e)(2). DSC equipment used on compulsorily fitted ships must meet the requirements contained in Subpart W for GMDSS.

* * * * *

(c) * * *

(3) Equipment functioning under the provisions of § 80.207(a) includes the brief use of radiotelegraphy, including keying only the modulating audio frequency, tone signals, and other signalling devices to establish or maintain communications provided that:

(i) These signalling techniques are not used on frequencies designated for general purpose digital selective calling (DSC) and distress and safety DSC calling as listed in § 80.359;

(ii) The authorized radiotelephone emission bandwidth is not exceeded;

(iii) Documentation of selective calling protocols must be available to the general public; and,

(iv) Harmful interference is not caused to stations operating in accordance with the International Radio Regulations.

19. A new Section 80.229 is added to Subpart E to read as follows:

§ 80.229 Special requirements for automatic link establishment (ALE).

Brief signalling for the purposes of measuring the quality of a radio channel and thereafter establishing communication shall be permitted within the 2,000 kHz - 27,500 kHz band under the following conditions:

a) The transmitter power shall not exceed 100 W ERP;

b) Transmissions must sweep linearly in frequency at a rate of at least 60 kHz per second, occupying any 3 kHz bandwidth for less than 50 milliseconds;

c) The transmitter shall scan the band no more than four times per hour;

d) Transmissions within 6 kHz of the following protected frequencies and frequency bands must not exceed 10 μW peak ERP:

i) Protected frequencies (kHz)

2091.0	4188.0	6312.0	12290.0	16420.0
2174.5	4207.5	8257.0	12392.0	16522.0
2182.0	5000.0	8291.0	12520.0	16695.0
2187.5	5167.5	8357.5	12563.0	16750.0
2500.0	5680.0	8364.0	12577.0	16804.5
3023.0	6215.0	8375.0	15000.0	20000.0
4000.0	6268.0	8414.5	16000.0	25000.0
4177.5	6282.0	10000.0		

ii) Protected bands (kHz)

4125.0-4128.0
8376.25-8386.75
13360.0-13410.0
25500.0-25670.0

e) The instantaneous signal, which refers to the peak power that would be measured with the frequency sweep stopped, along with spurious emissions generated from the sweeping signal, must be attenuated below the peak carrier power (in watts) as follows:

i) On any frequency more than 5 Hz from the instantaneous carrier frequency, at least 3 dB,

ii) On any frequency more than 250 Hz from the instantaneous carrier frequency, at least 40 dB, and

iii) On any frequency more than 7.5 kHz from the instantaneous carrier frequency, at least $43 + 10\log_{10}$ (peak power in watts) db.

20. In Section 80.363, a new paragraph (c) is added to read as follows:

§ 80.363 Frequencies for facsimile.

* * * * *

(c) The frequency 156.425 MHz is available for facsimile communications between ships and between ships and private coast stations in Alaska using F2C or F3C emissions.

21. In Section 80.371 the introductory portion of paragraph (c) is revised, paragraphs (d) and (e) are redesignated as (e) and (f) respectively, and new paragraphs (d) is added to read as follows:

§ 80.371 Public correspondence frequencies.

* * * * *

(c) Working frequencies in the marine VHF 156-162 MHz band. Initial grants may be made for more than one working frequency. An application for more than one working frequency must be accompanied by a factual showing that the frequency or frequencies will be used to provide service to ship stations.

(d) Additional frequencies in 156-162 MHz band. This paragraph describes frequencies available to public coast stations on a shared basis with the Railroad Radio Service and the Motor Carrier Radio Service.

(1) Assignment will be made only when VHF frequencies available for assignment under paragraph (c) of this section are not available or are unusable and the public coast station is to be located within 16 km (10 miles) of a navigable waterway. Applicants must comply with Subpart P and the protection criteria listed below.

Frequencies in the 156-162 MHz Band			
	Carrier frequency (MHz)		Points of communication (between coast and ship unless otherwise indicated)
	Ship transmit	Coast transmit	
	159.500	161.375	
	159.525	161.400	
	159.550[1]	161.425	
	159.575[1]	161.450	
	159.600[1]	161.475	
	159.625	161.500	
	159.650	161.525	
	159.675	161.550	

[1] These may also be used for intership communications when using 1 watt or less transmitter power.

(2) Station power, as measured at the output terminals of the transmitter, must not exceed 50 watts for coast stations, 25 watts for marine mobile stations, and 20 watts for land mobile stations. Antenna height (AAT) must not exceed 122 meters (400 feet) for coast stations and 4.5 meters (15 feet) for land mobile stations. Such base and mobile stations must not be operated on board aircraft in flight.

(3) Public coast station licensees may operate on frequencies 12.5 kHz offset from the assignable channels specified in paragraph (d)(1) of this section provided such licensees are also licensed for channels on each side of the offset frequency. Licensees using offset frequencies must comply with all other conditions of operation.

(4) The following table, along with the antenna height (AAT) and power (ERP), must be used to determine the minimum separation required between proposed public coast stations and co-channel Railroad Service base stations. Transmissions are considered co-channel where the Railroad Service station's authorized frequency is less than 20 kHz from the coast station's authorized frequency. Applicants whose exact ERP or HAAT are not reflected in the table must use the next highest figure shown.

REQUIRED SEPARATION IN KILOMETERS (MILES) OF COAST STATION FROM RAILROAD SERVICE BASE STATIONS

Coast Station

HAAT	ERP (watts)				
meters (feet)	400	300	200	100	50
15 (50)	138 (86)	135 (84)	129 (80)	121 (75)	116 (72)
30 (100)	154 (96)	151 (94)	145 (90)	137 (85)	130 (81)
61 (200)	166 (103)	167 (104)	161 (100)	153 (95)	145 (90)
122 (400)	187 (116)	183 (114)	177 (110)	169 (105)	159 (99)

(5) Public coast stations must additionally be located more than 80 km (50 miles) from any co-channel Motor Carrier base station. Transmissions are considered co-channel where the Motor Carrier station's authorized frequency is less than 20 kHz from the coast station's authorized frequency.

(6) The Commission may require, without a hearing, licensees of public coast stations authorized under this section that are located within 240 kilometers (150 miles) of an existing co-channel Motor Carrier base station, Railroad Service base station or international border to reduce radiated power, decrease antenna height, and/or install directional antennas in the event harmful interference should occur. Mobile stations must operate only within radio range of their associated base station unless otherwise permitted to do so.

* * * * *

22. In Section 80.373, paragraph (c)(1) is revised and the table in paragraph (f) is revised by removing the Commercial and Noncommercial entries, revising footnote 1, revising the third sentence in footnote 8, amending footnote 16, adding a new footnote 17 and adding a new entry titled "Vessel Operations" after "Navigational (Bridge-to-Bridge)", and changing footnote 14 to 15 on the entry for 70 in the entry titled "Digital Selective Calling" to read as follows:

§ 80.373 Private communications frequencies.

* * * * *

(c) * * *

(1) The simplex frequencies in the table below are available for assignment to private coast stations for business and operational radiotelephone communications. In addition, the frequencies listed in § 80.371(a) are also available for regional simplex communications, as specified in the table, for assignment to private coast stations for business and operational

radiotelephone communications.

* * * * *

(f) * * *

Frequencies in the 156-162 MHz Band			
	Carrier frequency (MHz)		Points of communication (between coast and ship unless otherwise indicated)
	Ship transmit	Coast transmit	
* * * * *			
Navigational (Bridge-to-Bridge)[5]			
* * * * *			
Vessel Operations			
01A[1]	156.050	156.050	
63A[1]	156.175	156.175	
07A	156.350	156.350	
67[7, 14]	156.375	.....	Intership only.
08	156.400	.....	Do.
68[17]	156.425	156.425	
09[16]	156.450	156.450	
69	156.475	156.475	
10	156.500	156.500	
11[3]	156.550	156.550	
71	156.575	156.575	
72	156.625	.....	Intership only.
18A	156.900	156.900	
78A	156.925	156.925	
19A	156.950	156.950	
79A	156.975	156.975	
80A	157.025	157.025	
88A[8]	157.425	.....	Intership only.
Digital Selective Calling			
* * * * *			
70 [15]	156.525	156.525	

[1] 156.050 MHz and 156.175 MHz are available for port operations and vessel operations purposes when used only within the U.S. Coast Guard designated Vessel Traffic Services (VTS) area of New Orleans, on the lower Mississippi River from the various pass entrances in

the Gulf of Mexico to Devil's Swamp Light at River Mile 242.4 above head of passes near Baton Rouge.

* * * * *

[3] 156.550 MHz, 156.600 MHz and 156.700 MHz are available in the U.S. Coast Guard designated port areas only for VTS communications and in the Great Lakes available primarily for communications relating to the movement of ships in secotrs designated by the St. Lawrence Seaway Development Corporation or the U.S. Coast Guard. The use of these frequencies outside VTS and ship movement sector protected areas is permitted provided they cause no interference to VTS and ship movement communications in their respective designated sectors.

* * * * *

[5] 156.375 MHz and 156.650 MHz are available primarily for intership navigation communications. These frequencies are available between coast and ship on a secondary basis when used on or in the vicinity of locks or drawbridges. Normal output power must not exceed 1 watt. Maximum output power must not exceed 10 watts for coast stations or 25 watts for ship stations.

* * * * *

[7] Use of 156.375 MHz is available for navigational communications only in the Mississippi River from South Pass Lighted Whistle Buoy "2" and Southwest Pass entrance Mid-channel Lighted Whistle Buoy to mill 242.4 above head of Passes near Baton Rouge, and in addition over the full length of the Mississippi River-Gulf Outlet Canal from entrance to its junction with the Inner Harbor Navigation Canal, and over the full length of the Inner Harbor Navigation Canal from its junction with the Mississippi River to its entry to Lake Pontchartrain at the New Seabrook vehicular bridge.

[8] * * *More than 75 miles from the United States/Canada border in the area of the Puget Sound and the Strait of Juan de Fuca, its approaches, the Great Lakes, and the St. Lawrence Seaway, 157.425 MHz is available for intership and vessel operations communications. * * *

* * * * *

[15] The frequency 156.450 MHz is to be used exclusively for distress, safety and calling using digital selective calling techniques. No other uses are permitted.

[16] The frequency 156.450 MHz is also available for intership, ship and coast general purpose calling by voluntarily equipped vessels, such as recreational boats, and coast stations.

[17] In Alaska, 156.425 MHz may be used by private coast stations and ship stations for facsimile as well as voice communications.

23. Section 80.405 is amended by revising the third sentence of paragraph (c)to read as follows:

§ 80.405 Station license.

* * * * *

(c) * * * When the station license cannot be posted as in the case of a marine utility station operating at temporary unspecified locations or the ship or recreational boat does not have an enclosed wheelhouse, it must be kept where it will be readily available for

inspection. * * *

24. Section 80.453 is amended by adding paragraph (a)(4) to read as follows:

§ 80.453 Scope of communications.

* * * * *

(a)(3) * * *

(4) With vehicles on land in accordance with § 80.123;

* * * * *

25. Section 80.477 is amended by revising the heading and paragraph (a) to read as follows:

§ 80.477 AMTS points of communication.

(a) AMTS coast stations may communicate with fixed platform stations located in the offshore waters of the Gulf of Mexico, with ship stations, and with land vehicles in accordance with § 80.123.

* * * * *

26. Section 80.479 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 80.479 Assignment and use of frequencies for AMTS.

(a) The limitations and frequencies assignable to AMTS stations are listed in Subpart H of this Part.* * *

27. Section 80.505 is amended by adding a new paragraph (d) to read as follows:

§ 80.505 Points of communication.

* * * * *

(d) An associated coast station unit is restricted to communications with private coast stations with which they are associated and with vessels served by the private coast stations with which they are associated, for the purpose of safe and expeditious conduct of the business of the private coast station licensee.

28. Section 80.507 is amended by revising paragraph (c) to read as follows:

§ 80.507 Scope of service.

* * * * *

(c) Each marine utility station or associated coast station unit on shore must be

operated as a private coast station except that it may be operated at temporary unspecified locations. Marine utility stations and associated coast station units on ships are operated as ship stations.

29. Section 80.511 is amended by adding a new paragraph (d) to read as follows:

§ 80.511 Assignment limitations.

* * * * *

(d) An associated coast station unit may operate only on the frequencies assigned to the private coast station with which the unit is associated.

30. Section 80.519 is amended by revising paragraph (b) to read as follows:

§ 80.519 Station identification.

* * * * *

(b) Marine utility stations, associated coast station units or private coast stations when exchanging communications with marine utility stations or associated coast station units may be identified by a unit identifier in lieu of the call sign. Identification by transmission of the assigned call sign must be at the end of the exchange or at least once every 15 minutes.

31. Section 80.653 is amended by revising paragraph (b)(2) to read as follows:

§ 80.653 Scope of communications.

* * * * *

(b)* * *

(2) Transmissions necessary for the test and maintenance of maritime radio equipment at repair shops and at temporary unspecified locations;

* * * * *

Part 87 - Aviation Services

1. The authority citation for Part 87 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-156, 301-609.

2. Section 87.27 is amended by revising paragraphs (a) and (b) to read as follows:

§ 87.27 License term.

(a) Licenses for aircraft stations will normally be issued for a term of ten years from the date of original issuance, major modification or renewal. Licensees may apply for renewal of the station license up to ninety (90) days from the date the license expires.

(b) Licenses other than aircraft stations in the aviation services will normally be issued for a term of five years from the date of original issuance, major modification, or renewal. Licensees, other than Aeronautical Advisory (unicom) stations licensed under § 87.215(b), Aeronautical Fixed, Aeronautical Enroute, and Airport Control Tower stations, may apply for renewal of the station license up to ninety days from the date the license expires.

* * * * *

3. In Section 87.131, the table is amended by adding a new footnote 9 to read as follows:

§ 87.131 Power and emissions.

* * * * *

Class of station	Frequency band/frequency	Authorized Emission(s)[9]	Maximum power [1]

* * * * *

[1] The power is measured at the transmitter output terminals and the type of power is determined according to the emission designator as follows:

(i) Mean power (pY) for amplitude modulated emissions and transmitting both sidebands using unmodulated full carrier.

(ii) Peak envelope power (pX) for all emission designators other than those referred to in paragraph (i) of this note.

* * * * *

[9] Excludes automatic link establishment.

* * * * *

4. A new Section 87.149 is added to read as follows:

§ 87.149 Special requirements for automatic link establishment (ALE).

Brief signalling for the purposes of measuring the quality of a radio channel and thereafter establishing communication shall be permitted within the 2,000 kHz - 27,500 kHz band under the following conditions:

a) The transmitter power shall not exceed 100 W ERP;

b) Transmissions must sweep linearly in frequency at a rate of at least 60 kHz per second, occupying any 3 kHz bandwidth for less than 50 milliseconds;

c) The transmitter shall scan the band no more than four times per hour;

d) Transmissions within 6 kHz of the following protected frequencies and frequency bands must not exceed 10 μW peak ERP:

i) Protected frequencies (kHz)

2091.0	4188.0	6312.0	12290.0	16420.0
2174.5	4207.5	8257.0	12392.0	16522.0
2182.0	5000.0	8291.0	12520.0	16695.0
2187.5	5167.5	8357.5	12563.0	16750.0
2500.0	5680.0	8364.0	12577.0	16804.5
3023.0	6215.0	8375.0	15000.0	20000.0
4000.0	6268.0	8414.5	16000.0	25000.0
4177.5	6282.0	10000.0		

ii) Protected bands (kHz)

4125.0-4128.0
8376.25-8386.75
13360.0-13410.0
25500.0-25670.0

e) The instantaneous signal, which refers to the peak power that would be measured with the frequency sweep stopped, along with spurious emissions generated from the sweeping signal, must be attenuated below the peak carrier power (in watts) as follows:

i) On any frequency more than 5 Hz from the instantaneous carrier frequency, at least 3 dB,

ii) On any frequency more than 250 Hz from the instantaneous carrier frequency, at least 40 dB, and

iii) On any frequency more than 7.5 kHz from the instantaneous carrier frequency, at least $43 + 10\log_{10}$ (peak power in watts) db.

Part 90 - Private Land Mobile Radio Services

1. The authority citation for Part 90 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303 and 332, unless otherwise noted.

2. In Section 90.89, the table in paragraph (b) is amended by revising the entry for "150-170" and adding paragraph (c)(23) to read as follows:

§ 90.89 Motor Carrier Radio Service.

* * * * *

(b) * * *

Motor Carrier Radio Service Frequency Table

Frequency or band	Class of station(s)	Limitations
* * * * *		
150-170.....	Base or mobile.....	21,23
* * * * *		

(c) * * *

(23) The frequencies in the band 159.4875 - 159.6875 MHz are shared with stations in the maritime service under the terms of operation described in § 80.371(d) of this Chapter.

* * * * *

3. In Section 90.91, the table in paragraph (b) is amended by revising the entry for "150-170" and adding paragraph (c) (22) to read as follows:

§ 90.91 Railroad Radio Service.

* * * * *

(b) * * *

Railroad Radio Service Frequency Table

Frequency or band	Class of station(s)	Limitations
* * * * *		
150-170.....	Base or mobile.....	18,22
* * * * *		

(c) * * *

(22) The frequencies in the band 161.3625 - 161.5625 MHz are shared with stations in the maritime service under the terms of operation described in § 80.371(d) of this Chapter.

* * * * *

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DA 95-143

In the Matter of	)	
	)	
Revision of ARMIS USOA Report	)	
(FCC Report 43-02) and ARMIS Joint	)	AAD 94-113
Cost Report (FCC Report 43-03)	)	
for Tier 1 Telephone Companies	)	

ORDER

Adopted: February 2, 1995 Released: February 2, 1995

By the Chief, Accounting and Audits Division:

I. INTRODUCTION AND BACKGROUND

1. By this Order, we adopt minor revisions to two Automated Reporting Management Information System (ARMIS) Reports: FCC Report 43-02 (the USOA Report) and FCC Report 43-03 (the Joint Cost Report). These changes are in response to industry suggestions and to staff analyses of previously filed reports. The revisions to the USOA Report: 1) increase the number of rows for reporting data for certain accounts in Table I-7, Donations or Payments for Services Rendered by Persons Other Than Employees; 2) add three new tax accounts to Table B-1, Balance Sheet Accounts; and 3) make a number of additional content and format revisions. The revisions to the Joint Cost Report: delete the "N/A" in all columns for Account 5230, Directory revenues, to allow carriers to report nonregulated revenues.

2. The USOA Report provides the annual operating results of the carriers' activities for every account in Part 32, Uniform System of Accounts for Telecommunications Companies ("USOA").[1] The Joint Cost Report provides the annual revenue requirement and joint cost data by study area pursuant to Section 64.901,

[1] 47 C.F.R. Part 32

Allocation of Costs.[2] Both reports are filed annually by all local exchange carriers (LECs) earning $100 million or more in annual revenues during the reporting year.[3]

II. DISCUSSION

3. Appendix A contains a summary of the changes that are being required to the USOA Report and the Joint Cost Report. Appendices B1 through B4 to this Order contain the revisions to the USOA Report. Three rows have been added to Table B-1 to incorporate the new tax accounts that have been added to the USOA by the Commission.[4]

4. Appendices C1 through C4 contain the revisions to the Joint Cost Report. These revisions require carriers to report directory revenue associated with nonregulated activities. Appendix D contains the updated list of Company and Study Area (COSA) Codes.

5. The action contained herein has been analyzed with respect to the Paperwork Reduction Act ("ACT") of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement is subject to approval by the Office of Management and Budget as prescribed by the Act. The modified filing requirements contained herein are being given to the Office of Management and Budget for approval.

6. The attached revisions to the USOA Report and to the Joint Cost report are adopted pursuant to authority delegated to the Common Carrier Bureau in paragraph 58 of the ARMIS Order and Section 0.291 of the Commission's Rules. Because the changes to the ARMIS reporting requirements are minor and implement accounting and other changes required by the Commission, notice and comment on the modifications to the reporting requirements contained herein are not necessary. Accordingly, compliance with notice and comment procedures of the Administrative Procedure Act is unnecessary. See U.S.C. § 553(b).

---

[2] 47 C.F.R. § 64.901.

[3] Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Part 31, 43, 67 and 69 of the FCC's Rules), 2 FCC Rcd 6283 (1987) (ARMIS ORDER), modified on recon., 3 FCC Rcd 6375 (1988)(ARMIS Reconsideration Order).

[4] Amendment of Part 32 of the Commission's Rules to Implement Statement of Financial Accounting Standards No. 96, Accounting for Income Taxes, 9 FCC Rcd 727 (1994). The Commission established three new tax accounts: Account 1437, Deferred Tax Regulatory Asset; Account 4341, Net Deferred Tax Liability Adjustments and Account 4361; Deferred Tax Regulatory Liability.

III. ORDERING CLAUSE

7. Accordingly, IT IS ORDERED, pursuant to the authority contained in Sections 1, 4(i), 4(j), 201-205, 215, 219, and 220 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-205, 215, 219, and 220, and Section 0.291 of the Commissions's rules, 47 C.F.R. § 0.291, that the ARMIS USOA Report (FCC Report 43-02) and the ARMIS Joint Cost Report (FCC Report 43-03), ARE REVISED, as set forth above and in the Appendices to this Order, effective for filings due April 1, 1995 and in the absence of modification, thereafter.

FEDERAL COMMUNICATIONS COMMISSION

Kenneth P. Moran

Kenneth P. Moran
Chief, Accounting and Audits Division

SUMMARY OF APPENDICES

Appendix A - Summary of Changes to FCC Report 43-02 (the USOA Report) and FCC Report 43-03 (the Joint Cost Report)

Appendix B - Summary of the instructions for FCC Report 43-02 (the USOA Report)

Appendix B1 - Reporting Procedures for FCC Report 43-02 (the USOA Report)

Appendix B2 - Reporting Definitions for FCC Report 43-02 (the USOA Report)

Appendix B3 - Automated Report Specifications for FCC Report 43-02 (the USOA Report)

Appendix B4 - Paper Report Specifications for FCC Report 43-02 (the USOA Report)

Appendix C - Summary of the instructions for FCC Report 43-03 (the Joint Cost Report)

Appendix C1 - Reporting Procedures for FCC Report 43-03 (the Joint Cost Report)

Appendix C2 - Reporting Definitions for FCC Report 43-03 (the Joint Cost Report)

Appendix C3 - Automated Report Specifications for FCC Report 43-03 (the Joint Cost Report)

Appendix C4 - Paper Report Specifications for FCC Report 43-03(the Joint Cost Report)

Appendix D - Company and Study Area (COSA) Code Table

NOTE: Appendix B2 contains only those pages that are modified in accordance with the foregoing Order.

PART I - Summary of changes to FCC Report 43-02 (the USOA Report) are described below.

1. The format for the dates entered in the following Tables are changed as specified in Appendix C:

Table	Rows	Columns
C-1	0110,0200,0210,0220,0230, 0240,0250-0258,0260-0292	b
C-3	ALL	e
C-4	0160,0260,0360,0460,0560, 0660,0760,0860,0960	b
B-11	ALL	c & d
B-15	ALL	i

2. TABLE B-1 - BALANCE SHEET ACCOUNTS

Three new rows are added to the report form:

Row 1437 Deferred tax regulatory asset
Row 4341 Net deferred tax liability adjustments
Row 4361 Deferred tax regulatory liability

3. TABLE I-7 DONATIONS OR PAYMENTS OF SERVICES RENDERED BY PERSONS OTHER THAN EMPLOYEES

The following row numbers are revised:

Rows 0201 through 0298 are renumbered 0201 through 0598.
Row 0299 is renumbered 0599.
Rows 0301 through 0398 are renumbered 0601 through 0698.
Row 0399 is renumbered 0699.
Rows 0401 through 0498 are renumbered 0701 through 0798.
Row 0499 is renumbered 0799.
Rows 0501 through 0598 are renumbered 0801 through 0898.
Row 0599 is renumbered 0899.
Rows 0601 through 0998 are renumbered 0901 through 1298.
Row 0999 is renumbered 1299.
Rows 1001 through 1098 are renumbered 1301 through 1398.
Row 1099 is renumbered 1399.
Rows 1101 through 1198 are renumbered 1401 through 1498.
Row 1199 is renumbered 1499.
Rows 1201 through 1298 are renumbered 1501 through 1598.
Row 1299 is renumbered 1599.

Rows 1301 through 1398 are renumbered 1601 through 1698.
Row 1399 is renumbered 1699.
Rows 1401 through 1498 are renumbered 1701 through 1798.
Row 1499 is renumbered 1799.
Rows 1501 through 1598 are renumbered 1801 through 1898.
Row 1599 is renumbered 1899.
Row 1600 is renumbered 1900.
Row 1700 is renumbered 2000.

PART II - Summary of changes to FCC Report 43-03 (the Joint Cost Report) are described below:

1. TABLE I - REGULATED/NONREGULATED DATA

In the Report Definition form on row 5230, "N/A" is removed from columns (d), (e), (f), (g), (h), (j), (l) and (m).

This document provides the instructions for FCC Report 43-02, the ARMIS USOA Report, which was adopted by the Commission in CC Docket No. 86-182. The instructions consist of the following five sections, which are attached:

1. Reporting Procedures - details on the specific procedures to be followed when submitting this report to the Commission.

2. Reporting Definition - an illustration of the rows and columns to be reported and their definitions.

3. Automated Report Specifications - the detailed automated data processing (ADP) specifications for the automated report to be filed.

4. Paper Report Specifications - the page layout and detailed specifications for the paper report to be filed.

A. Introduction

This document contains details on the specific procedures to be followed when submitting FCC Report 43-02, the ARMIS USOA Report, to the Commission.

B. General Information

1. FCC Report 43-02 was adopted by the Commission in the ARMIS Order, Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 69 of the FCC's Rules), CC Docket No. 86-182, 2 FCC Rcd 5770 (1987). The report is prescribed for every local exchange carrier with operating revenues in excess of $100 million or more.

2. Affected carriers shall file by April 1 of each year the report for the previous calendar year. The inial filing of this edition ofthe USOA Report will be filed April 1, 1995 and will contain data for the calendar year 1994.

3. The report shall be filed on an operating company basis.

4. Carriers seeking proprietary treatment for some data must provide two versions of each paper and automated report. The Confidential Version must contain all the required information (Confidential Treatment Tables/Data Records are provided to identify confidential data). The Public Version should not include data for which the carrier is seeking proprietary treatment. The carrier should prominently label the paper report and the diskette containing information subject to a claim of confidentiality to prevent inadvertent disclosure.

5. Carriers not seeking proprietary treatment for any data should provide only one version of each paper report and diskette, and the paper report and the diskette should be labeled the Unrestricted Version.

6. The Confidential Treatment Tables/Data Records are to be included in all reports but are not a substitute for applying for confidential treatment with this Commission following established Commission procedures.

7. Each report and diskette must be clearly labeled to include the report number, company, study area, period, COSA code, version and submission number. The report number is 43-02, which identifies the filing as the ARMIS USOA Report. The period identifies the year covered by the report. See the attached COSA Code Table (CO = Company, SA = Study Area) for a list of companies and their respective COSAs. The version refers to whether the filing is the Confidential, Public or Unrestricted Version. The submission number is defined as follows: Submission 0 is for test data purposes only. Submission 1 is the first submission of a year's data. Higher numbers (2, 3, etc.) would be used if needed for successive revisions to correct that year's submission.

C. Data Items That Are "Not Available" or Are "Withheld"

1. The term "Not Available" is used below to refer only to those items which the Commission ruled are not applicable to a particular row/column or are not required for a particular filing entity. The Confidential Version must contain values for all of the data items except those items which are "Not Available." If, in addition to the required study area reports, a carrier submits a report which

combines data for more than one study area, and this report includes a field such as a sum, a ratio, or a percentage that cannot be computed completely and accurately because it relies on another item which the Commission has ruled is a "Not Available" item, then that field is also considered to be "Not Available."

2. The term "Withheld" is used below to refer only to those items for which the carrier has applied for confidential treatment with the Commission and is only applicable to the Public Version. If a field such as a sum, a ratio or percentage relies on an item or items which have been withheld and that field is not also withheld, then it must include the withheld amount. For example, a carrier could withhold the individual values for two of three numbers which are totaled. If the carrier does not also apply for confidential treatment for the total, then that total must be the sum of all three numbers, not just the one which was not withheld. The Public Version must contain values for all of the data items except those items which are "Not Available" or those items which have been "Withheld".

3. See paragraph C.11 in the attached Automated Report Secifications and paragraph C.7 in the attached Paper Report Specifications for data entry conventions for these items.

D. Where to File

1. Carriers submitting FCC Report 43-02 should consult the schedule below which details the number of copies required and the location to which those copies should be delivered.

2. Carriers are reminded that they must serve a copy of either the Unrestricted Version or the Public Version of both the paper report and the automated report (diskette) on the FCC contractor for public records duplication.

NUMBER OF COPIES

	Transmittal Letter	Unrestricted Paper Report	Unrestricted Automated Report (diskette)
FCC Secretary 1919 M Street, N.W. Room 222 Washington, D.C. 20554	1	-	-
FCC Common Carrier Bureau Accounting & Audits Div. 2000 L Street, N.W. Room 812 Washington, D.C. 20554	2	2	2
FCC Common Carrier Bureau Industry Analysis Div. Room 100 1250 23rd Street, N.W. Washington, D.C. 20554	1	1	1
International Transcription Service, Inc. (ITS) 2100 M Street N.W. Suite 140 Washington, D.C. 20037	1	1	1

E. **Footnotes**

1. If any data for the current period differs materially from those for the previous period or the corresponding period of the preceding year and the difference is not self-explanatory but was caused by unusal circumstances, the filing carrier must include footnote text to explain the specific circumstances fully. Certain items require accompanying footnotes and those items are specified in the appropriate section of the instructions for filing the 43-02. Such footnotes are mandatory and must be entered in the Footnote Text Records and Footnote Table.

   EXAMPLE:

   Table B1, row 611 requires the reporting carrier to report in column ac, the number of full-time and part-time employees at the end of the year.

2. Footnotes must contain full explanations.

   EXAMPLE:

   Do <u>not</u> say, "Data are compiled using a more inclusive process than in previous filing."
   Do say, "Data are compiled using a process that includes xxx, which was not included in previous filings. The impact of including xxx in this row inflates this number by x% over the previous reporting period."

3. If the reporting carrier does not follow the procedures described in the row and column instructions of the attached Report Definition, it must fully explain any deviations from those procedures.

   EXAMPLE:

   Do not say, "This value was not calculated pursuant to the instructions."
   Do, say "This value was calculated using the xxx method rather than the method described in the instructions because..."

4. Fully explain means the footnote will provide enough information for the data user to understand the circumstances.

   EXAMPLES:

   a. Do not say, "Corrected Data."
   Do say, "$xxxx is changed to $xxxx because ..."

   b. Do not say, "Waiver" or Waiver Granted."
   Do say, "Waiver of Part xx.xxx was granted in CC Docket No. xx-xxx, X FCC Rcd, xxxx (1992) to allow AnyCompany to .... because ..."

5. Do not include explanatory footnotes in the transmittal letter. The footnote text must be included in the Footnote Text Records and the Footnote Table as specified in the Automated Report Specifications.

F. **Errata**

1. Carriers are under a legal obligation to correct any erroneous data discovered in FCC Report 43-02. Submissions containing corrected data must include references to indicate which data items were corrected since previous submission.

2. These references must be included in the Erratum Records and the Erratum Table as specified in the attached Automated Report Specifications and the attached Paper Report Specifications.

G. **Certification**

1. Carriers must certify the accuracy of the data submitted in FCC Report 43-02 by including a signed certification statement as the last page of the paper report.

2. The text of the certification statement is included on page 139 of the attached Report Definition.

H. **Waivers**

1. If a carrier determines that it will be unable to provide data required by FCC Report 43-03, it must file an application for waiver with the Commission following established Commission procedures. All such requests from a carrier should be included in a single application. The application must demonstrate good cause for reporting a different or lower level of detail and indicate how these deficiencies will be corrected.

2. Carriers are strongly encouraged to comply with the requirements. Omission of individual data items or entries, without request for waiver, is unacceptable. One reason that compliance with the full requirements is so important is that omission of any single data entry by any carrier will jeopardize the accuracy of aggregate industry information.

I. **Public Information**

1. The public or unrestricted versions of the paper reports filed as Report 43-02 may be examined by the public from 9:00 to 12:00 p.m. and from 1:00 to 4:00 p.m., Monday through Friday, in Room 812, 2000 L Street, N.W., Washington, D.C.

2. Copies of the public or unrestricted versions of the paper or automated reports filed as FCC Report 43-02 may be obtained from the FCC's contractor for public records duplication, ITS at 2100 M Street, N.W. Suite 140, Washington, D.C. 20037. Parties should contact Wilbur Thomas or ITS (202) 857-3800.

For further information regarding these procedures, contact:

Barbara Van Hagen
FCC Common Carrier Bureau
Accounting and Audits Division
(202) 418-0830

Estimated Average Burden Hours Per Response 899

Approved by OMB*
3060-0395
Expires 4/30/96

SUMMARY

This document provides the Report Definition for FCC Report 43-02 of the ARMIS USOA Report and lists the company level USOA data which must be provided annually. It contains the following:

		Pages
Table C-1	Identity of Respondent	6
Table C-2	Control Over Repondent	7
Table C-3	Board of Directors and General Officers	8
Table C-4	Stockholders	9
Table C-5	Important Changes During the Year	10 through 13
Table B-1	Balance Sheet Accounts	14 through 17
Table B-2	Statement of Cash Flows	18
Table B-3	Investments in Affiliated Companies	19 through 24
Table B-4	Analysis of Assets Purchased From or Sold To Affiliates	25
Table B-5	Analysis of Entries in Accumulated Depreciation	26 through 29
Table B-6	Summary of Investment and Accumulated Depreciation By Jurisdiction	30
Table B-7	Bases of Charges for Depreciation	31
Table B-8	Capital Leases	32
Table B-9	Deferred Charges	33
Table B-10	Accounts Payable To Affiliates	34
Table B-11	Long-Term Debt	35
Table B-12	Net Deferred Income Taxes	36 through 38
Table B-13	Other Deferred Credits	39
Table B-14	Capital Stock	40
Table B-15	Capital Stock and Funded Debt Reacquired or Retired During the Year	41 through 42
Table I-1	Income Statement Accounts	43 through 48
Table I-2	Analysis of Services Purchased From or Sold to Affiliates	49
Table I-3	Pension Cost	50 through 53
Table I-4	Other Operating Taxes	54
Table I-5	Prepaid Taxes and Tax Accruals	55 through 60
Table I-6	Special Charges	61
Table I-7	Donations or Payments for Services Rendered by Persons Other Than Employees	62 through 64
	Row and Column Descriptions	65 through 138
	Certification	139

NOTE: This document contains only those pages that are modified in accordance with Appendix A.

*Revisions made herein are subject to OMB review.

All dollar amounts must be rounded to the nearest thousand dollars. All percentage amounts must rounded to two places. Unless otherwise indicated, account balances must reflect the operations as of the end of the reporting period (December 31, 19xx).

Items which need not be reported because they do not apply are designated by N/A. All other fields must be populated. If there are no data applicable to a given field, enter zero. All tables must be submitted in the paper report whether or not data are reported on them.

Do not include explanatory notes in the transmittal letter; such notes must included in the Footnotes section of the filing.

NOTICE: The ARMIS USOA Report collects the operating results of the carriers; total activities for every account in the USOA, as specified in Part 32 of the Commission's Rules. The ARMIS USOA Report specifies information requirements in a consistent format and is essential to the FCC to monitor revenue requirements, rate of return, jurisdictional separations and access charges Your response is mandatory.

Public reporting burden for this collection of information is estimated to average 899 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to the Federal Communications Commission, Office of Managing Director, Washington, D.C. 20554, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

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xxxxxxxxxxxxxx Version
SUBMISSION x
TABLE C-1

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmmm yyyy To mmmm yyyy
COSA: xxxx

TABLE C-1 - IDENTITY OF RESPONDENT

Row No.	Classification (a)	Description (b)
0100	Exact Name of Respondent	
0110	Date of Incorporation	
0120	State of Incorporation	
	States of Operation.	
0130	State of Operation	Alabama
0131	State of Operation	
0132	State of Operation	
0133	State of Operation	
0134	State of Operation	
0135	State of Operation	
0136	State of Operation	
0137	State of Operation	
0138	State of Operation	
0139	State of Operation	
****		
0199	State of Operation	
	Laws Affecting Organization.	
0200	Date of Passage	
0210	Date of Filing Certificate	
0220	Date of Reorganization	
0230	Date of Receivership	
0240	Date of Trust	
	Partnership.	
0250	Partner and date of formation	
0251	Partner and date of formation	
0252	Partner and date of formation	
0253	Partner and date of formation	
****		
0258	Partner and date of formation	
0260	Law of State or Territory	
0261	Continuation of Law of State or Terr.	
0262	Continuation of Law of State or Terr.	
0270	Law of State or Territory	
0271	Continuation of Law of State or Terr.	
0272	Continuation of Law of State or Terr.	
****		
0290	Law of State or Territory	
0291	Continuation of Law of State or Terr.	
0292	Continuation of Law of State or Terr.	

**** Denotes missing rows.
(See State Row Numbers and Codes Reference Table for reporting the state applicable to your filing.)

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxxxx
PERIOD: From mmmm yyyy To mmmm yyyy
COSA: xxxx

TABLE C-3 - BOARD OF DIRECTORS AND GENERAL OFFICERS

Row No.	Classification (a)	Name and Address (City and State) (b)	SEC Form 10-K or Title and Department Over Which Jurisdiction is Exercised (c)	Term Expired or Current Term Will Expire (d)	Served Continuously From (e)
0100	SEC 10-K	N/A		N/A	N/A
0101	Director				
0102	Director				
0103	Director				
0104	Director				
0105	Director				
0106	Director				
0107	Director				
0108	Director				
0109	Director				
0110	Director				
0111	Director				
0112	Director				
0113	Director				
0114	Director				
0115	Director				
****					
0199	Director				
0201	Officer				
0202	Officer				
0203	Officer				
0204	Officer				
0205	Officer				
0206	Officer				
0207	Officer				
0208	Officer				
0209	Officer				
0210	Officer				
0211	Officer				
0212	Officer				
0213	Officer				
0214	Officer				
0215	Officer				
****					
0299	Officer				

**** Denotes missing rows.

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xxxxxxxxxx Version
SUBMISSION x
TABLE C-4

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxxxx
PERIOD: From mmmm yyyy To mmmm yyyy
COSA: xxxx

TABLE C-4 - STOCKHOLDERS

Row No.	Classification (a)	Description (b)	Number (c)
0100	Class of Stock		N/A
0110	Stockholder		
0111	Stockholder		
0112	Stockholder		
0113	Stockholder		
0114	Stockholder		
0115	Stockholder		
****			
0139	Stockholder		
0140	Total Number of Shares Held	N/A	
0150	Total Holders of Class of Stock	N/A	
0160	Date of Compilation		N/A
0170	Purpose of Compilation		N/A
0200	Class of Stock		N/A
0210	Stockholder		
0211	Stockholder		
0212	Stockholder		
0213	Stockholder		
0214	Stockholder		
0215	Stockholder		
****			
0239	Stockholder		
0240	Total Number of Shares Held	N/A	
0250	Total Holders of Class of Stock	N/A	
0260	Date of Compilation		N/A
0270	Purpose of Compilation		N/A
0300	Class of Stock		N/A
0310	Stockholder		
0311	Stockholder		
0312	Stockholder		
0313	Stockholder		
0314	Stockholder		
0315	Stockholder		
****			
0339	Stockholder		
0340	Total Number of Shares Held	N/A	
0350	Total Holders of Class of Stock	N/A	
0360	Date of Compilation		N/A
0370	Purpose of Compilation		N/A
****			
0900	Class of Stock		N/A
0910	Stockholder		
0911	Stockholder		
0912	Stockholder		
0913	Stockholder		
0914	Stockholder		
0915	Stockholder		
****			
0939	Stockholder		
0940	Total Number of Shares Held	N/A	
0950	Total Holders of Class of Stock	N/A	
0960	Date of Compilation		N/A
0970	Purpose of Compilation		N/A

**** Denotes missing rows.

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Expires 4/30/96
xxxxxxxxxxxx Version
SUBMISSION x

TABLE B-1-1

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxx
PERIOD: From mmmm yyyy To mmmm yyyy
COSA: xxxx

TABLE B-1 - BALANCE SHEET ACCOUNTS
(Dollars in thousands)

Row/ Acct No.	Account Title (a)	Amount (b)
	Current Assets	
1130	Cash	
1140	Special cash deposits	
1150	Working cash advances	
1160	Temporary investments	
1120	Cash and equivalents	
1180	Telecommunications accounts receivable	
1181	Accounts receivable allowance-telecommunications	
1190	Other accounts receivable	
1191	Accounts receivable allowance-other	
1200	Notes receivable	
1201	Notes receivable allowance	
1210	Interest and dividends receivable	
1220	Inventories	
120	Total Noncash Current (excluding prepayments)	
1290	Prepaid rents	
1300	Prepaid taxes	
1310	Prepaid insurance	
1320	Prepaid directory expenses	
1330	Other prepayments	
1280	Prepayments	
1350	Other Current Assets	
130	Total Current Assets	
	Noncurrent Assets	
1401	Investments in affiliated companies	
1402	Investments in nonaffiliated companies	
1406	Nonregulated investments	
1407	Unamortized debt issuance expense	
1408	Sinking funds	
1410	Other noncurrent assets	
1437	Deferred tax regulatory asset	
1438	Deferred maintenance and retirements	
1439	Deferred charges	
1500	Other jurisdictional assets-net	
150	Total Noncurrent Assets	

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TABLE B-1-2

TABLE B-1 - BALANCE SHEET ACCOUNTS
(Dollars in thousands)

Row/ Acct. No.	Account Title (aa)	Beginning Balance (ab)	Additions (ac)	Retirements (ad)	Transfers/ Adjustments (ae)	Ending Balance (af)
	Plant					
2001	Telecommunications plant in service (TPIS)					
2002	Property held for future telecommunications use (PHFTU)					
2003	Telephone plant under construction-short term (TPUC)					
2004	Telephone plant under construction-long term (TPUC)					
2005	Telecommunications plant adjustment					
2006	Nonoperating plant					
2007	Goodwill					
210	Total Plant					
	TPIS - General Support					
2111	Land					
2112	Motor vehicles					
2113	Aircraft					
2114	Special purpose vehicles					
2115	Garage work equipment					
2116	Other work equipment					
2121	Buildings					
2122	Furniture					
2123	Office equipment					
2124	General purpose computers					
2110	Land and Support					
	TPIS - Central Office					
2211	Analog electronic switching					
2212	Digital electronic switching					
2215.1	Step-by-step switching					
2215.2	Crossbar switching					
2215.3	Other electro-mechanical switching					
2215	Electro-mechanical switching					
2210	Central Office-Switching					
2220	Operator Systems					
2231.1	Satellite & earth stations					
2231.2	Other radio facilities					
2231	Radio systems					
2232	Circuit equipment					
2230	Central Office-Transmission					
	TPIS - Information Origination/Termination					
2311	Station apparatus					
2321	Customer premises wiring					
2341	Large PBX					
2351	Public telephone terminal equipment					
2362	Other terminal equipment					
2310	Information Origination/Termination					
	TPIS - Cable & Wire					
2411	Poles					
2421	Aerial cable					
2422	Underground cable					
2423	Buried cable					
2424	Submarine cable					
2425	Deep sea cable					
2426	Intrabuilding network cable					
2431	Aerial wire					
2441	Conduit systems					
2410	Cable & Wire					
240	Total TPIS (before amortizable assets)					

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TABLE B-1-3

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmmm yyyy To mmmm yyyy
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TABLE B-1 - BALANCE SHEET ACCOUNTS
(Dollars in thousands)

Row/ Acct. No.	Account Title (aa)	Beginning Balance (ab)	Additions (ac)	Retirements (ad)	Transfers/ Adjustments (ae)	Ending Balance (af)
	TPIS Amortizable Assets					
2681	Capital leases					
2682	Leasehold improvements					
2680	Amortizable tangibles					
2690	Intangibles					
260	Total TPIS					

Row/ Acct No.	Account Title (ba)	Amount (bb)
	Depreciation and Amortization	
3100	Accumulated depreciation	
3200	Accumulated depreciation - PHFTU	
3300	Accumulated depreciation - nonoperating	
3410	Accumulated amortization - Capitalized leases	
3420	Accumulated amortization - Leasehold improvement	
3400	Accumulated amortization - Tangibles	
3500	Accumulated amortization - Intangibles	
3600	Accumulated amortization - Other	
340	Total Depreciation and Amortization	
350	Net Plant	
360	Total Assets	
	Current Liabilities	
4010	Accounts payable	
4020	Notes payable	
4030	Advanced billing and payments	
4040	Customer's deposits	
4050	Current maturities - long term debt	
4060	Current maturities - capital leases	
4070	Income taxes - accrued	
4080	Other taxes - accrued	
4100	Net current deferred operating income taxes	
4110	Net current deferred nonoperating income taxes	
4120	Other accrued liabilities	
4130	Other current liabilities	
410	Total Current Liabilities	
	Long-Term Debt	
4210	Funded debt	
4220	Premium on long-term debt	
4230	Discount on long-term debt	
4240	Reacquired debt	
4250	Obligations under capital leases	
4260	Advances from affiliated companies	
4270	Other long-term debt	
420	Total Long-Term Debt	

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TABLE B-1-4

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmmm yyyy To mmmm yyyy
COSA: xxxx

TABLE B-1 - BALANCE SHEET ACCOUNTS
(Dollars in thousands)

Row/ Acct No.	Account Title (ba)	Amount (bb)
	Other Liabilities and Deferred Credits	
4310	Other long-term liabilities	
4320	Unamortized operating investment tax credits - net	
4330	Unamortized nonoperating investment tax credits - net	
4340	Net noncurrent deferred operating income taxes	
4341	Net deferred tax liability adjustments	
4350	Net noncurrent deferred nonoperating income taxes	
4360	Other deferred credits	
4361	Deferred tax regulatory liability	
4370	Other jurisdictional liabilities/deferred credits - net	
430	Total Other Liabilities and Deferred Credits	
	Stockholders' Equity	
4510	Capital stock	
4520	Additional paid-in capital	
4530	Treasury stock	
4540	Other capital	
4550	Retained earnings	
440	Total Stockholders' Equity	
450	Total Liabilities and Stockholders' Equity	
460	Retained Earnings (Beginning of Year)	
465	Net Income	
470	Dividends Declared	
475	Miscellaneous Debits	
480	Miscellaneous Credits	
490	Retained Earnings (End of Year)	

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TABLE B-11

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxxxxx
PERIOD: From mmmm yyyy To mmmm yyyy
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TABLE B-11 - LONG-TERM DEBT
(Dollars in Thousands)

Row No.	Classification (a)	Name of Obligation (b)	Nominal Date of Issue (c)	Date of Maturity (d)	Face Amount Outstanding (e)	Unamortized Prem/Disc Acct. 4220/ Acct. 4230 (f)	Unamortized Debt. Iss Expenses Acct. 1407 (g)	Stated Rate % (h)	Yield Rate % (i)
0101	Acct. 4210								
0102	Acct. 4210								
****	*****	****	****	****	****	****	****	****	****
0185	Acct. 4210								
0190	Total 4210	N/A	N/A	N/A				N/A	N/A
0201	Acct. 4050								
0202	Acct. 4050								
****	****	****	****	****	****	****	****	****	****
0289	Acct. 4050								
0290	Total 4050	N/A	N/A	N/A				N/A	N/A
0301	Acct. 4260								
0302	Acct. 4260								
****	****	****	****	****	****	****	****	****	****
0308	Acct. 4260								
0310	Total 4260	N/A	N/A	N/A				N/A	N/A
0401	Acct. 4270								
0402	Acct. 4270								
****	****	****	****	****	****	****	****	****	****
0408	Acct. 4270								
0410	Total 4270	N/A	N/A	N/A				N/A	N/A
0500	Ttl All Accts	N/A	N/A	N/A				N/A	N/A

**** Denotes missing rows.

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TABLE B-15-1

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE B-15 - CAPITAL STOCK AND FUNDED DEBT REACQUIRED OR RETIRED DURING THE YEAR
(Dollars in Thousands)

Row No.	Classification (a)	Description of Security (b)	REACQUIRED DURING THE YEAR				RETIRED DURING THE YEAR	
			REACQUISITION COST		Book or Face Amount (e)	Number of Shares of Stock (f)	Book or Face Amount (g)	Number of Shares of Stock (h)
			Per $100 of Debt (c)	Per Share of Stock (d)				
CAPITAL STOCK								
0101	Reacquired							
0102	Reacquired							
****	****	*****	****	****	****	****	****	****
0110	Reacquired							
0121	Retired							
0122	Retired							
****	****	*****	****	****	****	****	****	****
0130	Retired							
FUNDED DEBT								
0201	Reacquired							
0202	Reacquired							
****	****	*****	****	****	****	****	****	****
0210	Reacquired							
0221	Retired							
0222	Retired							
****	****	*****	****	****	****	****	****	****
0299	Retired							

**** Denotes missing rows.

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PERIOD: From mmmm yyyy To mmmm yyyy
COSA: xxxx

TABLE B-15-2

TABLE B-15 - CAPITAL STOCK AND FUNDED DEBT REACQUIRED OR RETIRED DURING THE YEAR
(Dollars in Thousands)

Row No.	Classification (a)	Effective Date of Call (if any) (i)	UNAMORTIZED DISCOUNT OR PREMIUM AND EXP.		REDEMPTIKON PREMIUM OR DISCOUNT		REACQUISITION OR REDEMPTION EXPENSES	
			Account (j)	Amount (k)	Account (l)	Amount (m)	Account (n)	Amount (o)
CAPITAL STOCK								
0101	Reacquired							
0102	Reacquired							
****	****	*****	****	****	****	****	****	****
0110	Reacquired							
0121	Retired							
0122	Retired							
****	****	*****	****	****	****	****	****	****
0130	Retired							
FUNDED DEBT								
0201	Reacquired							
0202	Reacquired							
****	****	*****	****	****	****	****	****	****
0210	Reacquired							
0221	Retired							
0222	Retired							
****	****	*****	****	****	****	****	****	****
0299	Retired							

**** Denotes missing rows.

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
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COSA: xxxx

TABLE I-7-1

TABLE I-7 - DONATIONS OR PAYMENTS FOR SERVICES RENDERED BY PERSONS OTHER THAN EMPLOYEES
(Dollars in Thousands)

Row No.	Nature of Service (a)	Name of Recipient (b)	Amount (c)
ACADEMIA			
0101	Name of Academia		
0102	Name of Academia		
0103	Name of Academia		
****	****	****	****
0199	Total Academia	N/A	
ADVERTISING AND INFORMATION SERVICES			
0201	Name of Advertising and Information Service		
0202	Name of Advertising and Information Service		
0203	Name of Advertising and Information Service		
****	****	****	****
0599	Total Advertising and Information Services	N/A	
AUDIT AND ACCOUNTING			
0601	Name of Audit and Accounting Service		
0602	Name of Audit and Accounting Service		
0603	Name of Audit and Accounting Service		
****	****	****	****
0699	Total Audit and Accounting Services	N/A	
CLERICAL AND OFFICE SERVICES			
0701	Name of Clerical and Office Service		
0702	Name of Clerical and Office Service		
0703	Name of Clerical and Office Service		
****	****	****	****
0799	Total Clerical and Office Services	N/A	
COMPUTER AND DATA PROCESSING SERVICES			
0801	Name of Computer and Data Processing Service		
0802	Name of Computer and Data Processing Service		
0803	Name of Computer and Data Processing Service		
****	****	****	****
0899	Total Computer and Data Processing Services	N/A	

**** Denotes missing rows.

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I-7-2

TABLE I-7 - DONATIONS OR PAYMENTS FOR SERVICES RENDERED BY PERSONS OTHER THAN EMPLOYEES
(Dollars in Thousands)

Row No.	Nature of Service (a)	Name of Recipient (b)	Amount (c)
CONSULTING AND RESEARCH SERVICES			
0901	Name of Consulting and Research Service		
0902	Name of Consulting and Research Service		
0903	Name of Consulting and Research Service		
****	****	****	****
1299	Total Consulting and Research Services	N/A	
FINANCIAL SERVICES			
1301	Name of Financial Service		
1302	Name of Financial Service		
1303	Name of Financial Service		
****	****	****	****
1399	Total Financial Services	N/A	
LEGAL			
1401	Name of Legal Service		
1402	Name of Legal Service		
1403	Name of Legal Service		
****	****	****	****
1499	Total Legal Services	N/A	
MEMBERSHIP FEES AND DUES			
1501	Name of Association		
1502	Name of Association		
1503	Name of Association		
****	****	****	****
1599	Total Membership Fees and Dues	N/A	
PERSONNEL SERVICES			
1601	Name of Personnel Service		
1602	Name of Personnel Service		
1603	Name of Personnel Service		
****	****	****	****
1699	Total Personnel Service	N/A	

**** Denotes missing rows.

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxxxx
PERIOD: From mmmm yyyy To mmmm yyyy
COSA: xxxx

TABLE I-7-3

TABLE I-7 - DONATIONS OR PAYMENTS FOR SERVICES RENDERED BY PERSONS OTHER THAN EMPLOYEES
(Dollars in Thousands)

Row No.	Nature of Service (a)	Name of Recipient (b)	Amount (c)
PRINTING AND DESIGN SERVICES			
1701	Name of Printing an Design Service		
1702	Name of Printing and Design Service		
1703	Name of Printing ana Design Service		
****	****	****	****
1799	Total Printing and Design Services	N/A	
SECURITY SERVICES			
1801	Name of Security Service		
1802	Name of Security Service		
1803	Name of Security Service		
****	****	****	****
1899	Total Security Services	N/A	
1900	Contributions	N/A	
2000	Directory Services	N/A	

**** Denotes missing rows.

TABLE C-1 - IDENTITY OF RESPONDENT

GENERAL INSTRUCTIONS

This table displays information on the identity of the carrier and other pertinent corporate information.

ROW INSTRUCTIONS

ROW	
	Exact Name of Respondent
0100	Enter the exact name of the carrier. Use the words "The" and "Company" or "Co." only when they are parts of the corporate name.
0110	Date of Incorporation - Enter the date, i.e., mm/dd/yyyy the company was incorporated.
0120	State of Incorporation - Enter the state in which the carrier was incorporated.
0130 through 0199	States of Operation - Each of these rows is provided for entry of data associated with states in which the carrier operates. Use one row to enter the each state in which the carrier operates. Include only those rows with data to be reported.
	Laws Affecting Organization
0200	Date of Passage - Enter the date of passage, i.e, mm/dd/yyyy, of the act if the company was incorporated under a special charter.
0210	Date of Filing Certificate - Enter the date of filing a certificate, i.e., mm/dd/yyyy, of organization if under a general law.
0220	Date of Reorganization - Enter the date of the last reorganization, i.e., mm/dd/yyyy.
0230	Date of Receivership - Enter the date, i.e., mm/dd/yyyy, when receivership began if in receivership.
0240	Date of Trust - Enter the date, i.e., mm/dd/yyyy, when the trust began if under a trust or other possession.
	Partnership
0250 through 0258	Each of these rows is provided for entry of data associated with a partnership. Use one row to enter the name of each present partner and the date of formation, i.e., mm/dd/yyyy, of partnership with respect to each partner.

0260 through 0292	Each of these rows is provided for entry of data associated with the applicable laws of the State or Territory under which the partnership was organized. Use no more than 3 rows to describe the law of the State or Territory, under which the partnership was organized citing chapter and section of each statute and dates, i.e, mm/dd/yyyy, of amendments to the charter. Include all grants of corporate powers by the United State or any foreign country.

COLUMN INSTRUCTIONS

COLUMN	
(b)	Description - Enter the appropriate description for each row or group of rows.

TABLE C-3 - BOARD OF DIRECTORS AND GENERAL OFFICERS

GENERAL INSTRUCTIONS

This table displays information on the board of directors and general officers of the carrier. This table need not be completed if the respondent includes comparable information on directors and executive officers in its SEC Form 10-K/Annual Report and submits a copy with its ARMIS USOA Report.

ROW INSTRUCTIONS

ROW

0100 — SEC 10-K - Enter "Yes" to indicate that a SEC Form 10-K/Annual Report has been submitted in lieu of the information called for on this table.

Director

0101 through 0199 — Each of these rows is provided for entry of data associated with the board of directors. Use one row for each director.

Officer

0201 through 0299 — Each of these rows is provided for entry of data associated with officers. Use one row for each officer.

COLUMN INSTRUCTIONS

COLUMN

(b) — Name of Director or Officer and Address (City and State) Enter the name and address of each person who was a director or a general officer during the reporting period.

(c) — SEC Form 10-K or Title and Department Over Which Jurisdiction is Exercised - Enter "Yes" to indicate that a SEC Form 10-K/Annual Report has been submitted in lieu of the information called for on this table for row 0100; or the title and the department over which each officer exercised jurisdiction.

(d) — Term Expired or Current Term Will Expire - Enter a "Zero" or the year, i.e., yyyy, the term expired or the year the current term will expire for each director reported in column (b).

(e) — Served Continuously From - Enter from the first year to the last year, i.e., mm/dd/yyyy to mm/dd/yyyy, the length each officer or director reported in column (b) has served continuously.

TABLE C-4 - STOCKHOLDERS

GENERAL INSTRUCTIONS

This table displays information on stockholders. This information shall be compiled as at December 31, except that if similar information has been compiled for some other purpose between the beginning of the year for which the report is made and the date of preparation of this report, the latest compilation shall be used. Stockholders of each class of stock shall be listed in the order of their holdings. Use no more than 30 rows for listing of stockholders for each class of stock reported. A total for holders, a date compilation and a purpose of compilation shall be reported for each class of stock reported. If any such holder was a trustee or nominee for other persons who held the beneficial interest in the securities, the name and address of each person who has the beneficial interest shall be given, if known. Likewise, if any person had the beneficial interest in securities held number of stock being reported first.

ROW INSTRUCTIONS

ROW

0110 Class of Stock - Enter the name of the class of stock.

0110 through 0139 Each of these rows is provided for entry of data associated with stockholders. Use one row for each stockholder, beginning with the highest and continuing until 30 largest holdings have been listed. Include only those rows with data to be reported in column (b).

0140 Total Number of Shares Held - Enter in column (c) in whole numbers the total number of shares held by all stockholders of the class of stock reported.

0150 Total Holders of Class of Stock - Enter in column (c) in whole numbers the total holders of the class stock.

0160 Date of Compilation - Enter in column (b) the date of compilation, i.e., mm/dd/yyyy, of the class of stock reported.

0170 Purpose of Compilation - Enter in column (b) the reason for the compilation of the class of stock reported.

COLUMN INSTRUCTIONS

COLUMN

(b) Description - Enter the name of the class of stock; the name and address of the 30 largest stockholders; the of compilation; and the purpose of compilation for each class of stock reported. The stockholders shall be listed with holder of the highest number of stock being reported first.

(c) Total Number of Shares Held - Enter the number of shares held by each stockholder reported in column (b) and the total for each class of stock reported on the appropriate rows.

TABLES B-1 - BALANCE SHEET ACCOUNTS

Every row item is not described below. Those rows omitted from the following instructions are Part 32 accounts and the amounts entered for these accounts should be reported pursuant to our Part 32 Rules. The following descriptions apply to those rows that are summarizations or need further clarification. Four digit row numbers indicate that there is a Part 32 account bearing the same number and title. Unless otherwise indicated, three digit row numbers indicate that there is no comparable Part 32 account.

ROW INSTRUCTIONS

Row	
1120	Cash and Equivalents - For Class A companies this amount equals the total of Row/Accounts 1130 through 1160. For Class B companies this amount equals the balance of Account 1120.
120	Total Noncash Current (excluding prepayments) - This amount equals the total of Row/Accounts 1180 + 1190 + 1200 + 1210 + 1220 - 1181 - 1191 - 1201.
1280	Prepayments - For Class A companies this amount equals the total of Row/Accounts 1290 through 1330. For Class B companies this amount equals the balance of Account 1280.
130	Total Current Assets - This amount equals the total of Row/Accounts 1120, 120, 1280 and 1350.
150	Total Noncurrent Assets - This amount equals the total of Row/Accounts 1401 through 1500.
210	Total Plant - This amount equals the total of Row/Accounts 2001 through 2007.
2110	Land and Support - For Class A companies this amount equals the total of Row/Accounts 2111 through 2124. For Class B companies this amount equals the balance of Account 2110.
2215	Electro-mechanical Switching - This amount equals the total of Row/Accounts 2215.1 through 2215.3.
2210	Central Office - Switching - For Class A companies this amount equals the total of Row/Accounts 2211, 2212 and 2215. For Class B companies this amount equals the balance of Account 2210.
2231	Radio Systems - This amount equals the total of Row/Accounts 2231.1 and 2231.2.
2230	Central Office - Transmission - For Class A companies this amount equals the total of Row/Accounts 2231 and 2232. For Class B companies amount equals the balance of Account 2230.
2310	Information Origination/Termination - For Class A companies this amount equals the total of Row/Accounts 2311 through 2362. For Class B companies this amount equals the balance of Account 2310.
2410	Cable and Wire Facilities - For Class A companies this amount equals the total of Row/Accounts 2411 through 2441. For Class B companies this amount equals the balance of Account 2410.

240 Total Telecommunications Plant in the Service (Before Amortizable Assets) - This amount equals the total of Row/Accounts 2110, 2210, 2220, 2230, 2310 and 2410.

2680 Amortizable Tangible Assets - For Class A companies this amount equals the total of Row/Accounts 2681 and 2682. For Class B companies this amount equals the balance of Account 2680.

260 Total Telecommunications Plant-in-Service - This amount equals the total of Row/Accounts 240, 2680, and 2690. This amount must also equal Row/Account 2001.

3400 Accumulated Amortization-Tangible - For Class A companies this amount equals the total of Row/Accounts 3410 and 3420. For Class B companies this amount equals the balance of Account 3400.

340 Total Depreciation and Amortization - This amount equals the total of Row/Accounts 3100, 3200, 3300, 3400, 3500 and 3600.

350 Net Plant - This amount equals row 210, column (af) less 340 column (bb).

360 Total Assets - This amount equals the total of Row/Accounts 130, 150, and 350.

410 Total Current Liabilities - This amount equals the total of Row/Accounts 4010 through 4130.

420 Total Long-Term Debt - This amount equals the total of Row/Accounts 4210 + 4220 + 4240 + 4250 + 4260 + 4270 - 4230.

430 Total Other Liabilities and Deferred Credits - This amount equals the total of Row/Accounts 4310 through 4370.

440 Total Stockholders' Equity - This amount equals the total of Row/Accounts 4510 through 4550.

450 Total Liabilities and Stockholders' Equity - This amount equals the total of Rows 410 + 420 + 430 + 440. This amount must also equal row 360.

490 Retained Earnings (End of Year) - This amount equals the total of Rows 460 + 465 + 480 - 470 - 475. This amount must also equal Row/Account 4550.

COLUMN INSTRUCTIONS

Column

(b) Amount - Enter the ending balance for the reporting period for each account identified in column (a).

(ab) Beginning Balance - Enter the balance at the beginning of the reporting period for each account identified in column (aa). This amount should equal the ending balance reported for the previous period. Otherwise, provide a footnote to explain the discrepancy.

(ac) Additions - Enter the amount representing plant added to each account during the reporting period including transfers and adjustments made between accounts within the reporting period. Do not include prior period adjustments.

(ad) Retirements - Enter the amount representing plant retired from each account during the reporting period including transfers and adjustments made between accounts within the reporting period. Do not include prior period adjustments.

(ae) Transfers/Adjustment - Enter the amount representing transfers to or from each account or adjustments made to the accounts for prior periods.

(af) Ending Balance - Enter each account balance at the close of the reporting period. This amount equals column (ab) plus column (ac) plus column (ae) less column (ad). This formula assumes that retirements and transfers to accounts are reported as positive amounts. Any inverse amounts, e.g., "negative retirements" or transfers from accounts, are reported as negative amounts.

(bb) Amount - Enter the ending balance for the reporting period for each account identified in column (ba).

TABLE B-11 - LONG-TERM DEBT

GENERAL INSTRUCTIONS

This table displays information on the long-term obligations of the company. All dollar amounts must be rounded to the nearest thousand.

ROW INSTRUCTIONS

ROW

Account 4210 - The total face amount of unmatured debt, maturing more than one year from date of issue, issued by the company and not retired, and the total face amount of similar unmatured debt of other companies, the payment of which has been assumed by the company, including funded debt the maturity of which has been extended by specific agreement.

0101 through 0185	Each of these rows is provided for entry of data associated with long-term obligations, including those maturing in the coming year in Account 4210. Use one row for each long-term obligation. Include only those rows with data to be reported.
0190	Total Account 4210 - Enter the total of rows 0101 through 0185 for columns (e) through (g).

Account 4050 - The amount (including any obligations for premiums) of long-term debt matured and unpaid without any special agreement for extension of maturity, including unpresented bonds drawn for redemption through the operation of sinking and redemption fund agreements.

0201 through 0289	Each of these rows is provided for entry of data associated with long-term obligations including those maturing in the coming year in Account 4050. Use one row for each long-term obligation. Include only those rows with data to be reported.
0290	Total Account 4050 - Enter the total of rows 0201 through 0289 for columns (e) through (g).

Account 4260 - The amount of advances from affiliated companies.

0301 through 0308	Each of these rows is provided for entry of data associated with advances from affiliated companies in Account 4260. Use one row for each advance. Include only those rows with data to be reported.
0310	Total Account 4260 - Enter the total of rows 0301 through 0308 for columns (e) through (g).

Account 4270 - The amount of long-term debt not provided for elsewhere.

0401 through 0408	Each of these rows is provided for entry of data associated with long-term obligations including those maturing in the coming year in Account 4270. Use one row for each long-term obligation. Include only those rows with data to be reported.
0410	Total Account 4270 - Enter the total of rows 0401 through 0408 for columns (e) through (g). For column (f), discounts are to be reported as negative numbers.

0500 Total All Accounts - Enter the total of rows 0190, 0290, 0310 and 0410 for columns (e) through (g). For column (f), discounts are to be reported as negative numbers.

COLUMN INSTRUCTIONS

COLUMN

(b) Name of Obligation - Enter the identity of each long-term obligation under each account number.

(c) Nominal Date of Issue - Enter the nominal date of issue, i.e., mm/dd/yyyy, for each long-term obligation reported.

(d) Date of Maturity - Enter the date of maturity, i.e., mm/dd/yyyy, for each long-term obligation reported.

(e) Face Amount Outstanding - Enter the face amount of each long-term obligation reported.

(f) Unamortized Premium/Discount Account 4220/Account 4230 -Enter the amount of unamortized premium or discount in Accounts 4220 and 4230, respectively, for each long-term obligation reported. Discounts are to be reported as negative numbers.

(g) Unamortized Debt Issuance Expenses Account 1407 - Enter the amount of any unamortized debt issuance expenses related to each long-term obligation reported.

(h) Stated Rate - Enter the stated rate for each long-term obligation reported. Stated rate shall be defined as the interest rate on the face amount of the debt instrument.

(i) Yield Rate - Enter the yield rate for each long-term obligation reported. Yield rate shall be defined as the rate of interest after consideration of the discount or premium and any related unamortized debt issuance expenses.

TABLE B-15 - CAPITAL STOCK AND FUNDED DEBT REACQUIRED OR RETIRED DURING THE YEAR

GENERAL INSTRUCTIONS

This table displays data on securities reacquired and retired during the year. All dollar amounts must be rounded to the nearest thousand.

ROW INSTRUCTIONS

ROW

CAPITAL STOCK

REACQUIRED

0101 through 0110 — Each of these rows is provided for entry of data associated with capital stock of the company that was reacquired. Use one row to describe each capital stock reacquired. Include only those rows with data to be reported.

RETIRED

0121 through 0130 — Each of these rows is provided for entry of data associated with capital stock of the company that was retired. Use one row to describe each capital stock retired. Include only those rows with data to be reported.

FUNDED DEBT

REACQUIRED

0201 through 0210 — Each of these rows is provided for entry of data associated with funded debt of the company that was reacquired. Use one row to describe each funded debt reacquired. Include only those rows with data to be reported.

RETIRED

0221 through 0299 — Each of these rows is provided for entry of data associated with funded debt of the Company that was retired. Use one row to describe each funded debt retired. Include only those rows with data to be reported.

COLUMN INSTRUCTIONS

COLUMN

(b) Description of Security - Enter the identity of the security and include, as appropriate, the dividend rate (if any) or the interest rate, term and maturity date.

REACQUIRED DURING THE YEAR - The face or book amount of the security reacquired prior to maturity that has not been retired.

REACQUISITION COST - The cost per unit of the security reacquired.

(c) Per $100 of Debt - Enter the cost per unit of the reacquired securities, i.e., the call rate per unit in the case of called securities, the face amount per unit of matured debt, or the average purchase price per unit in the case of other securities reacquired. Do not include brokerage fees, unamortized discounts, premiums or issuance costs in this amount.

(d) Per Share of Stock - Enter the cost per share of stock for each class of stock reacquired, i. e., the call rate per unit in the case of called securities or the average purchase price per unit in the case of other securities reacquired. Do not include brokerage fees, unamortized discounts, premiums or issuance costs in this amount.

(e) Book or Face Amount - Enter the amount of book or face amount of the securities reacquired.

(f) Number of Shares of Stock - Enter number of shares of stock reacquired.

RETIRED DURING THE YEAR - The face amount of the security that has been retired.

(g) Book or Face Amount - Enter the book or face amount of the securities retired whether or not they were reacquired in another year but retired in the current reporting period.

(h) Number of Shares of Stock - Enter the number of shares of stock retired whether or not they were reacquired in another year but retired in the current reporting period.

(i) Effective Date of Call (if any) - Enter 0010010000 or the effective date of call, i.e., mm/dd/yyyy, of each security called during the reporting period.

UNAMORTIZED DISCOUNT OR PREMIUM AND EXPENSES - The amount of premium, discount and expenses associated with all classes of securities that has not been amortized. Enter the amounts of premium as negative numbers.

(j) Account - Enter the account number to which the disposition of discounts, premiums, and expenses are made.

(k) Amount - Enter the amount of unamortized discounts, premiums, and expenses disposed of associated with the securities reacquired and retired in the year in which the dispositions are made. Do not report normal amortization of amounts includable in Account 4220, Discount on long-term debt, or Account 4230, Premium on long-term debt, through charges or credits to Account 7510, Interest on funded debt. If any amounts are to be amortized, state that fact in a footnote. Describe the plan of amortization (including the period thereof), and give references to (1) the public authorities (if any) having jurisdiction over each transaction, (2) their authorization (e.g., case or docket number), and (3) this Commission's approval of the proposed accounting.

REDEMPTION PREMIUM OR DISCOUNT - The excess of the current money value received at the purchase of the security over the sum of its book or face amount and interest or dividends accrued at the date of the purchase or in the case of a discount, the excess of the book or face amount of the security plus interest or dividends accrued at the date of the purchase over the current money value of the consideration received at its purchase.

(l) Account - Enter the account number to which the redemption premium or discount was made during the reporting period.

(m) Amount - Enter the amount of call or tender premiums associated with the reacquired securities.

REACQUISITION OR REDEMPTION EXPENSES - The cost in connection with the reacquisition or redemption of the security.

(n) Account - Enter the account number to which the disposition of other associated costs of reacquisition were made during the reporting period.

(o) Amount - Enter the amount of other associated costs of reacquisition, including brokerage fees and unamortized discounts, premiums and issuance costs associated with securities reacquired.

TABLE I-7 - DONATIONS OR PAYMENTS FOR SERVICES RENDERED BY PERSONS OTHER THAN EMPLOYEES

GENERAL INSTRUCTIONS

This table displays payments to academia and payments during the current reporting period for services rendered by persons other than employees. The term "payments" includes fees, dues, retainers, commissions, gifts, contributions, assessments, bonuses, subscriptions, allowances for expenses or any other form of payments for services or as donations. This does not include rents for property, taxes, utility services, traffic settlements, amounts paid to affiliates for general services and licenses, and amounts paid to persons other than non carrier affiliates for construction or maintenance of plant. All dollar amounts must be rounded to the nearest thousand. Include only those rows for which data are to be reported.

ROW INSTRUCTIONS

ROW

Academia - The amount paid to the academic world.

0101 through 0198	Each of these rows is provided for entry of data associated with payments to academia. Use one row for each academia to whom a payment was made.
0199	Total Academia - Enter the total of rows 0101 through 0198.

Advertising and Information Services

0201 through 0598	Each of these rows is provided for entry of data associated with payments for advertising and information services. Use one row for each recipient to whom payments exceeding $250,000 were made.
0599	Total Advertising and Information Services - Enter the total of rows 0201 through 0598.

Audit and Accounting

0601 through 0698	Each of these rows is provided for entry of data associated with payments for audit and accounting services. Use one row for each recipient to whom payments exceeding $25,000 were made.
0699	Total Audit and Accounting - Enter the total of rows 0601 through 0698.

Clerical and Office Services

0701 through 0798	Each of these rows is provided for entry of data FCC associated with payments for clerical and office services. Use one row for each recipient to whom payments exceeding $250,000 were made.
0799	Total Clerical and Office Services - Enter the total of rows 0401 through 0498.

Computer and Data Processing Services

0801 through 0898	Each of these rows is provided for entry of data associated with payments for computer and data processing services. Use one row for each recipient to whom payments exceeding $250,000 were made.
0899	Total Computer and Data Processing Services - Enter the total of rows 0801 through 0898.

Consulting and Research Services

0901 through 1298	Each of these rows is provided for entry of data associated with payments for consulting and research services. Use one row for each recipient to whom payments exceeding $25,000 were made.
1299	Total Consulting and Research Services - Enter the total of rows 0901 through 1298.

Financial

1301 through 1398	Each of these rows is provided for entry of data associated with payments for financial services. Use one row for each recipient to whom payments exceeding $25,000 were made.
1399	Total Financial - Enter the total of rows 1301 through 1398.

Legal

1401 through 1498	Each of these rows is provided for entry of data associated with payments for legal services. Use one row for each recipient to whom payments exceeding $25,000 were made.
1499	Total Legal - Enter the total of rows 1401 through 1498.

Membership Fees and Dues

1501 through 1598	Each of these rows is provided for entry of data associated with payments for membership fees and dues in associations of telecommunications companies, trade, technical and professional associations, and other organizations charged to operating expenses; and social and athletic clubs, service clubs, and other organizations charged to Account 7370. Use one row for each recipient to whom payments exceeding $10,000 were made.
1599	Total Membership Fees and Dues - Enter the total of rows 1501 through 1598.

Personnel Services

1601 through 1698	Each of these rows is provided for entry of data associated with payments for personnel services. Use one row for each recipient to whom payments exceeding $250,000 were made.

1699	Total Personnel Services - Enter the total of rows 1601 through 1698.

Printing and Design Services

1701 through 1798	Each of these rows is provided for entry of data associated with payments for printing and design services. Use one row for each recipient to whom payments exceeding $250,000 were made.
1799	Total Printing and Design Services - Enter the total of rows 1701 through 1798.

Security Services

1801 through 1898	Each of these rows is provided for entry of data associated with payments for security services. Use one row for each recipient to whom payments exceeding $250,000 were made.
1899	Total Security Services - Enter the total of rows 1501 through 1898.
1900	Contributions - Enter the total amount of all charitable donations made by the carrier.
2000	Directory - Enter the total amount paid for directory services.

COLUMN INSTRUCTIONS

COLUMN	
(b)	Name of Recipient - Enter the name of the recipient to whom the carrier paid an amount for service.
(c)	Amount - Enter the amount paid to each recipient reported in column (b) and for all other items, enter the aggregate amount.

A. Introduction

This document contains the detailed automated data processing (ADP) specifications for the automated report to be filed as FCC Report 43-02, the ARMIS USOA Report.

B. General Format and Media

1. All data must be submitted on 3.5-inch double-sided high density IBM-PC compatible diskettes.

2. All files must be coded in ASCII.

3. See sections B and C on pages 1 and 2 of the accompanying Reporting Procedures for a discussion of the Confidential Version, the Public Version, and the Unrestricted Version of this report and for a definition and discussion of data items that are "Not Available" or are "Withheld."

4. This report will be divided into three files, each file has six components as listed below.

   a. the four letter COSA code (CO = Company, SA = Study Area, see attached COSA Code Table for a list of companies and their respective COSAs).
   b. the last two digits of the year which is covered by the data.
   c. the letters "US".
   d. a decimal point.
   e. the letter "P", "C", or "U" to indicate whether this is the Public version, the Confidential version, or the only (Unrestricted) version since all data are non-confidential.
   f. the digit 0 (zero) or the letter "B" or "I" to indicate whether this file contains data for the C Tables/Schedules or the B Tables/Schedules or the I Tables/Schedules.
   g. one digit for the submission number. Submission 0 is for test data purposes only. Submission 1 is for the first submission of a year's data. Higher numbers (2, 3, etc.) will be used only if needed for successive revisions to correct that year's submission.

For example, the three file names for the Unrestricted Version of the initial USOA Report data file to be submitted by Illinois Bell to cover the calendar year 1993, are LBIL93US.U01, LBIL93US.UB1, LBIL93US.UI1:

LBIL	COSA for Illinois Bell
93	Data for calendar year 1993
US	USOA Report data file
.	decimal point
U	Unrestricted version
01	Data for all C Tables/Schedules and the first submission of this year's data
	or
B1	Data for all B Tables/Schedules and the first submission of this year's data
	or
I1	Data for all I Tables/Schedules and the first submission of this year's data

5. Three separate files must be prepared for this report. Include a Header (Type H1) and Label (Type L1) record in each file.

   a. the first file (LBIL92US.U01) will contain data for:
      C Tables/Schedules (Type A records)

   b. the second file (LBIL92US.UB1) will contain data for:
      B Tables/Schedules (Type B and P records)
      Table I-1 (Type B and X records)

   c. the third file (LBIL92US.UI1) will contain data for:
      I Tables/Schedules, except Table I-1, (Type I records)
      Confidential Treatment Table (Type C records)
      Footnote Text Table (Type F records)
      optional Erratum Table (Type E records)
      Trailer Record (Type T record)

6. More than one file may be placed on the same diskette, as long as the file names are different and cover the same period, version and submission number.

C. Data Entry Conventions

1. Give each record a unique record number, beginning with 1001 and incrementing by one, with no numbers skipped.

2. Begin each data record in column 1 and make each record the proper length as specified in the accompanying record layouts. Commas are used as delimiters between fields. All numeric fields are right justified and space filled, e.g., use ___123, NOT 123___. All non-numeric fields are enclosed in double quotation marks and are left justified and space filled within these quotation marks, e.g. use "John Doe_____".

3. If an entry is to be a subtraction, indicate so by placing a minus sign in the column immediately preceding the numeric data, e.g., use -4, NOT - 4 or (4).

4. When records require the entry of multiple rows of data for a particular item, enter data in only those rows for which there are data to report.

5. Section ID row number records have been added for identifying sections of a table that requires reporting multiple rows of data for a particular item. This record includes a counter to show the total number of rows or the total number of individual sets of rows in a section. A list of Section ID row numbers to be used in this report is enclosed. If there are no data applicable to one of these sections, enter the word "none"; double quotation marks are not needed.

6. Records requiring the use of specific row numbers for a set of rows in a particular section of a table must follow the sequence patterns as shown on the Forms Section of the accompanying Report Definition.

7. When records require the use of row numbers that are associated with a state code or name, use assigned row numbers and the state code on the Automated Report, not the state name, as shown on the State Row Numbers and Codes Reference Table of the accompanying Report Definition. State Codes are to be enclosed in double quotation marks, left justified and space filled.

   Example: For the Automated Report, enter only the state row numbers and state codes.
   e.g., 110,"AL",.....

8. In any data field requiring the entry of a state or territory (e.g., State of Incorporation, States of Operation, etc.) enter the Automated Report state code, not the state name, as shown on the State Row Numbers and Codes Reference Table of the accompanying Report Definition. State Codes are to be enclosed in double quotation marks and left justified and space filled, e.g., "NY ".

9. Do NOT include "$" or "%" or embedded commas or decimal points in any numeric data fields, except for row number and percentage fields, which will include a decimal point but not a percent sign.

10. In data fields requiring an entry of a date (e.g., Date of Incorporation) or year (e.g. Term Expired or Current Term will Expire) must be enclosed in double quotation marks and left justified, e.g., date entered as "mmddyyyy"; year entered as "yyyy".

    If there is no date to report on a row that has other entries (e.g., Table B-15, column (i) Effective Date of Call (if any)), zero fill date as "00000000". Do not leave blank or insert "N/A".

11. In any numeric data field designated by N/A, enter -99999. In any text field designated by N/A, enter "N/A", include quotation marks. In any date field designated by N/A, enter "00000000", include quotation marks. If a "Public Version" diskette is filed, enter -88888 in any numeric data field for which data are "withheld".

    These entries must be formatted according to the format rules of a particular data field, with the exception of fields requiring an account number; e.g., in percentage fields, -99999 are ented as -99999.00. All other fields must be populated.

12. If a reporting carrier wishes to apply data to a numeric field containing an N/A, the carrier must enter, as a footnote to the field, the amount(s) and an explanation. The amount(s) must not be entered in the N/A's field. If there are no data applicable to an open field, enter zero.

D. Rounding Conventions

1. As specified in the accompanying Report Definition, all dollar amounts must be rounded to the nearest thousand dollars.

2. All percentage amounts (e.g., Expected Long Term Return On Assets), must be entered in percent and must be rounded to two decimal places.

   Example: 12 2/3 percent must be entered as 12.67

3. All ratios must be rounded to two decimal places. Service life (e.g., Bases of Charges for Depreciation) must be rounded to one decimal place.

4. Unless otherwise indicated, account balances must reflect the results of operations as of the end of the reporting period (December 31, 19xx).

E. Footnotes

1. If any data for the current period differs materially from those for the previous period and the difference is not self-explanatory but was caused by unusual circumstances not explained in a previous report, then include footnote text to explain the specific circumstances.

2. If the reporting carrier does not follow the procedures described in the row and column instructions of the attached Report Definition, it must explain any deviations from those procedures in an explanatory footnote. Such footnotes must provide detailed explanations of the procedures actually used by the carrier and its specific reasons for deviating from procedures prescribed by the Commission's Rules. This provision should not be interpreted to mean that deviations from the prescribed rules will automatically be approved by the Commission.

3. Footnotes must be included in the footnote text record(s) of the automated report.

F. Errata

1. Carriers are under a legal obligation to correct any erroneous data discovered in FCC Report 43-02. Submission containing corrected data must include references to indicate which data items were corrected since previous submission.

2. These references must be included in the erratum record(s) of the automated report.

List of Section ID Row Numbers

Data Record Type	Section Row Number Sets	Section ID Row Numbers	Section ID Record Types
A1	130.0 to 199.0	125.0	A1a
	250.0 to 258.0	245.0	A1b
	260.0 to 292.0	259.0	A1c
A2	150.0 to 192.0	145.0	A2a
	300.0 to 390.0	295.0	A2b
	400.0 to 492.0	395.0	A2c
A3	101.0 to 199.0	95.0	A3a
	201.0 to 299.0	200.0	A3b
A4	100.0, 200.0,... 900.0	95.0*	A4
	110.0 to 139.0	105.0	A4a
	210.0 to 239.0	205.0	A4b
	310.0 to 339.0	305.0	A4c
	410.0 to 439.0	405.0	A4d
	510.0 to 539.0	505.0	A4e
	610.0 to 639.0	605.0	A4f
	710.0 to 739.0	705.0	A4g
	810.0 to 839.0	805.0	A4h
	910.0 to 939.0	905.0	A4i
	*(Shows the total number of Classes of Stock reported)		
A5	110.0 to 192.0	100.0	A5a
	210.0 to 292.0	200.0	A5b
	410.0 to 999.0	400.0	A5c
	1010.0 to 2093.0	1000.0	A5d
	1110.0 to 1193.0	1100.0	A5e
	1210.0 to 1292.0	1200.0	A5f
	1310.0 to 1393.0	1300.0	A5g
	1410.0 to 1493.0	1400.0	A5h
	1510.0 to 1592.0	1500.0	A5i
	1610.0 to 1793.0	1600.0	A5j
	1810.0 to 1892.0	1800.0	A5k
B3	101.0 to 129.0	100.0	B3a
	201.0 to 229.0	200.0	B3b
	301.0 to 329.0	300.0	B3c
	401.0 to 429.0	400.0	B3d
B4	101.0 to 139.0	100.0	B4a
	201.0 to 239.0	200.0	B4b
B7	110.0 to 900.0	100.0*	B7
	*(Shows the total number of sets of States reported)		
B8	101.0 to 130.0	100.0*	B8
	*(Shows the total number of Capital Leases reported)		
B9	101.0 to 140.0	100.0*	B9
	*(Shows the total number of Deferred Charges reported)		

List of Section ID Row Numbers

Data Record Type	Section Row Number Sets	Section ID Row Numbers	Section ID Record Types
B10	101.0 to 160.0	100.0*	B10
	*(Shows total number of Accounts Payable to Affiliates reported)		
B11	101.0 to 185.0	100.0	B11a
	201.0 to 289.0	200.0	B11b
	301.0 to 308.0	300.0	B11c
	401.0 to 408.0	400.0	B11d
B13	101.0 to 140.0	100.0	B13
	*(Show the total number of Other Deferred Credits reported)		
B14	101.0 to 140.0	100.0	B14
	*(Shows the total number of Capital Stock reported)		
B15	101.0 to 110.0	100.0	B15a
	121.0 to 130.0	120.0	B15b
	201.0 to 210.0	200.0	B15c
	221.0 to 299.0	220.0	B15d
I2	101.0 to 139.0	100.0	I2a
	201.0 to 239.0	200.0	I2b
I5	110.0 to 115.0	109.0	I5a
	120.0 to 125.0	119.0	I5b
	130.0 to 135.0	129.0	I5c
	140.0 to 145.0	139.0	I5d
	150.0 to 155.0	149.0	I5e
	160.0 to 165.0	159.0	I5f
	170.0 to 175.0	169.0	I5g
	180.0 to 185.0	179.0	I5h
	190.0 to 195.0	189.0	I5i
I6	210.0 to 218.0	205.0	I6a
	230.0 to 238.0	225.0	I6b
I7	101.0 to 198.0	100.0	I7a
	201.0 to 598.0	200.0	I7b
	601.0 to 698.0	300.0	I7c
	701.0 to 798.0	400.0	I7d
	801.0 to 898.0	500.0	I7e
	901.0 to 1298.0	600.0	I7f
	1301.0 to 1398.0	1000.0	I7g
	1401.0 to 1498.0	1100.0	I7h
	1501.0 to 1598.0	1200.0	I7i
	1601.0 to 1698.0	1300.0	I7j
	1701.0 to 1798.0	1400.0	I7k
	1801.0 to 1898.0	1500.0	I7l

E. Data Record Descriptions

The thirty-four data record types are described below. See pages 18 through 103 for record layouts. The automated file will consist of the following record Types:

Record Type H1	Header Record	One Type H1 record per file. The first record of each file. Contains identifying data. See pages 18,20,36,38,79 & 81 for record layout.
Record Type L1	Label Record	One Type L1 record per file. The second record of each file. Contains report number, carrier name, etc. See pages 18,21,36,39,79 & 82 for record layout.
Record Type A1	Identity of Respondent Data Record	102 or less Type A1 records per file. One Type A1 record for each of the 8 single row entries. One Type A1a record to show the total number of states of operation reported, followed by 1 to 70 Type A1a records for each state of operation reported. One Type A1b record to show the total number of partners reported, followed by 0 to 9 Type A1b records for each partner reported. One Type A1c record to show the total number of laws reported, followed by 0 to 12 Type A1c records for each law reported. Each record provides information on the identify of a respondent. See pages 18,22&23 for record layout.
Record Type A2	Control Over Respondent Data Record	64 or less Type A2 records per file. One Type A2 record for each of the 3 single row entries, respectively. Three Type A2 records to identify the sole controlling organization or person if form of control is "sole". One Type A2a record to show the total number of joint controlling organizations or persons reported, followed by 0 to 15 Type A2a records for each organization or person if form of control is "joint".

Record Type A2	Data Record Continued	One Type A2b record to show the total number of indirect controllers reported, followed by 0 to 10 Type A2b records for each controller. One Type A2c record to show the total number of trustees reported, followed by 0 to 30 Type A2c records for each trustee. Each record provides information on the control over a respondent. See pages 18, 24&25 for record layout.
Record Type A3	Board or Directors and General Officers Data Record	201 or less Type A3 records per file. One Type A3 record for the 1 single row entry. If the entry for this row is "YES", no additional Type A3 records are needed. One Type A3a record to show the total number of directors reported, followed by 1 to 99 Type A3a records for each director. One Type A3b record to show the total number of officers reported, followed by 1 to 99 Type A3b records for each officer. Each record provides information on the directors and officers of a carrier. See pages 18, 26-28 for record layout.
Record Type A4	Stockholders Data Record	325 or less Type A4 records per file. One Type A4 record to show the total number of classes of stock reported. One Type A4a record to report the name of the first class of stock reported, followed by one Type A4a record to show the total number of stockholders reported for the first class of stock, followed by one to 30 Type A4a records for each stockholder entry, followed by one Type A4a record for total number of shares held, followed by one Type A4a record for total holders of class of stock, followed by two Type A4a records for the two compilation entries. Continue including Type A4(b-i, inclusively) records for up to 8 additional classes of stock, respectively. Follow the pattern of the Type A4a record above for each additional class of stock reported. Each row displays information on stockholders. See pages 18, 29&30 for record layout.

Record Type A5	Important Changes During the Year Data Record	975 or less Type A5 records per file. One Type A5 record for the one single row entry, respectively. One Type A5a record to show the total number of extension of systems reported, followed by 0 to 27 Type A5a records for each extension of systems. One Type A5b record to show the total number of properties sold, followed by 0 to 27 Type A5b records for each particular entry of property sold. One Type A5c record to show the total number of companies under direct control reported, followed by 0 to 36 Type A5c records to identify each form of control and company and description of direct control. One Type A5d record to show the total number of changes in direct control reported, followed by 0 to 36 Type A5d records to identify each form of control and company and discription of change. One Type A5e record to show the total number of companies reported, that ceased to be directly controlled by a carrier, followed by 0 to 27 Type A5e records for each company name and statment of the fact associated with the change. Continue including Type A5(f-j, inclusively) records for these 5 records, respectively. Follow the pattern of the Type A5a through Type A5e records above for each additional change during the year. One Type A5k record to show the total number of changes in service and rate schedules reported, followed by 0 to 598 Type A5k records to identify each change in service and rate. Each record discloses important changes during the reporting period for the carrier. See pages 18&19, 31-35 for record layout.
Record Type B1	Account Balance Data Record	179 Type B1 records per file. One Type B1 record for each of the 33 rows shown on page 14 of the accompanying Report Definition. After the 54 Type P1 records (see below), include one Type B1 record for each of the 55 rows shown on page 17 of the accompanying Report Definition. Then include one Type B1 record for each of the 48 rows (from Table I-1) shown on page 43 of the accompanying Report Definition.

Record Type B1	Account Balance Data Record (Continued)	After the 91 Type X1 records (see below), include one Type B1 record for each of the 43 rows (from Table I-1) shown on pages 47 & 48 of the accompanying Report Definition. Each record contains the ending balance or dollar amount recorded in that particular account. See pages 36 & 40 for record layout.
Record Type P1	Balance/Income Period Activity Data Record (from Tables B-1 & I-1)	54 Type P1 records per file. One record for each of the 54 rows shown on pages 15 & 16 of the accompanying Report Definition. Each record contains the details of the activity of the account during the reporting period. See pages 36 & 41 for record layout.
Record Type X1	Income Statement Expense Matrix Data Record (from Table I-1)	91 Type X1 records per file. One record for each of the 91 rows of expense data shown on pages 44 - 46 of the accompanying Report Definition. Each record contains the dollar amounts for the expense matrix elements. See pages 36 & 42 for record layout.
Record Type B2	Cash Flows Data Record	35 Type B2 records per file. One record for each of the 35 rows of cash activities shown on page 18 of the accompanying Report Definition. Each record contains increase/ decrease in cash and cash equivalents. See pages 36 & 43 for record layout.
Record Type B3	Investments In Affiliates and Other Companies Data Record	130 or less Type B3 records per file. One Type B3a record to show the total number investments in affiliates reported using the "equity method" for accounts 1401/1402, 1160 and 1180, followed by 0 to 29 Type B3a records for each investment, followed by one Type B3a record for the total amount of investments using the "equity method". One Type B3b record to show the total number investments in affiliates reported using the "cost method" for accounts 1401/1402, 1160 and 1180, followed by 0 to 29 Type B3b records for each investment, followed by one Type B3b record for the total amount of investments using the "cost method". Include One Type B3 record for total affiliates, followed by One Type B3 record for aggregate non-affiliates, followed by one Type B3 record for total investments for accounts 1401/1402,

Record Type B3	Data Record Continued	1160 and 1180. Continue including Type B3(c-d, inclusively) records for rows with data to report pertaining to investments in affiliates using the "equity" or "cost" methods, respectively, for accounts 1190, 1200 and 1210. Follow the pattern of the Type B3a and B3b records above. Include One Type B3 record for total affiliates, followed by one Type B3 record for the aggregate non-affiliates, followed by one Type B3 record for total investments for accounts 1190, 1200 and 1210. Each record displays the amount of carrier investment in affiliated companies accounted for under the "equity method" and the "cost method" and investment in nonaffiliated companies. See pages 36, 44-48 for record layout.
Record Type B4	Analysis of Assets Purchased From or Sold To Affiliates Data Record	82 or less Type B4 records per file. One Type B4a record to show the total number of assets purchased from affiliates reported, followed by 0 to 39 Type B4a records for each affiliate, followed by 0 or 1 Type B4a record for the total amount of assets purchased. One Type B4b record to show the total number of assets sold to affiliates reported, followed by 0 to 39 Type B4b records for each affiliate, followed by 0 or 1 Type B4b record for the total amount of assets sold. Each record displays data regarding the purchase of assets from and sales of assets to affiliates. See pages 36, 49-51 for record layout.
Record Type B5	Analysis of Entries In Accumulated Depreciation Data Record	39 Type B5 records per file. One record for each of the 39 rows of depreciable telecommunications plant maintained in subsidiary record categories in Account 3100. Each record displays the activities in the accumulated depreciation account. See pages 36, 52&53 for record layout.

Record Type B6	Summary of Investment and Accumulated Depreciation by Jurisdiction Data Record	One Type B6 record for each row with data to be reported. Include one Type B6 record for total company data, even if there is only one state row to report. Each record displays the plant investment and its associated accumulated depreciation by jurisdiction. See pages 36, 54&55 for record layout.
Record Type B7	Bases of Charges For Depreciation by Jurisdiction Data Record	One Type B7 record to show the total number of sets of jurisdictions reported, followed by one Type B7 record for each row with data to be reported. Include One Type B7 record for total company data, even if there is only one state row to report. Each record displays the charges for depreciation for each class or subclass of depreciable plant for which a depreciation rate is determined by jurisdiction. See pages 36&37, 56-58 for record layout.
Record Type B8	Capital Leases Data Record	32 or less Type B8 records per file. One Type B8 record to show the total number of capital leases reported, followed by 0 to 30 Type B8 records for each capital lease, followed by 0 or 1 Type B8 record for the total amount of all capital leases reported. Each record displays amounts capitalized, the accumulated amortization, the lease obligation broken down between current and noncurrent amounts, and a breakdown of lease cost components expensed. See pages 37, 59&61 for record layout.
Record Type B9	Deferred Charges Data Record	42 or less Type B9 records per file. One Type B9 record to show the total number of deferred charges reported, followed by 0 to 40 Type B9 records for each deferred charge, followed by 0 or 1 Type B9 record for the total amount of all deferred charges reported. Each record displays the items being deferred in Account 1439. See pages 37, 62&63 for record layout.

Record Type B10	Accounts Payable To Affiliates Data Record	52 or less Type B10 records per file. One Type B10 record to show the total number of affiliate creditors reported, followed by 0 to 50 Type B10 records for each affiliate creditor, followed by 0 or 1 Type B10 record for the total amount payable. Each record displays outstanding payables to affiliate creditors. See pages 37, 64-66 for record layout.
Record Type B11	Long Term Debt Data Record	199 or less Type B11 records per file. One Type B11a record to show the total number of long term obligations reported for account 4210, followed by 0 to 85 Type B11a records for each obligation, followed by 0 or 1 Type B11a record for the total amount for account 4210. One Type B11b record to show the total number of long term obligations reported for account 4050, followed by 0 to 89 Type B11b records for each obligation, followed by 0 or 1 Type B11b record for the total amount for account 4050. Continue including Type B11(c-d, inclusively) records for rows with data to report pertaining to the two remaining long-term debt accounts, respectively. Follow the pattern of Type B11b records above. Include one Type B11 record for the total of all accounts reported Each record displays information on long-term obligations, including those maturing in the coming year in account 4210. See pages 37, 67-69 for record layout.
Record Type B12	Net Deferred Taxes Data Record	36 Type B12 records per file. One record for each of the 36 rows of income tax accounts. Each record displays data regarding net deferred operating/nonoperating income taxes in accounts 4100, 4340, 4110 or 4350. See pages 37 & 70 for record layouts.
Record Type B13	Other Deferred Credits Data Record	42 or less Type B13 records per file. One Type B13 record to show the total number of other deferred charges reported, followed by 0 to 40 Type B13 records for each deferred charge, followed by 0 or 1 Type B13 record for the total amount of all deferred charges reported. Each record displays items being deferred in Account 4360. See pages 37, 71&72 for record layout.

Record Type B14	Capital Stock Data Record	31 or less Type B14 records per file. One Type B14 record to show the total number of capital stocks reported, followed by 0 to 29 Type B14 records for each capital stock, followed by 0 or 1 Type B14 record for the total amount of all capital stocks reported. Each record displays data on a class of stock. See pages 37, 73-75 for record layout.
Record Type B15	Capital Stock & Funded Debt Reacquired or Retired Data Record	112 or less Type B15 records per file. One Type B15a record to show the total number of capital stocks reacquired, followed by 0 to 10 Type B15a records for each capital stock reacquired. One Type B15b record to show the total number of capital stocks retired, followed by 0 to 10 Type B15b records for each capital stock retired. Continue including Type B15(c-d, inclusively) records for rows for with data to report pertaining to funded debt reacquired or retired, respectively. Follow the pattern of the Type B15a and B15b records above. Each record displays data on securities acquired and retired. See pages 37, 76-78 for record layout.
Record Types B1 and X1	Income Statement Data Record	These records are included in the Type B1 and Type X1 record descriptions and layouts(see above).
Record Type I2	Analysis of Services Purchased From or Sold To Affiliates Data Record	82 or less Type I2 records per file. One Type I2a record to show the total number of services purchased from affiliates reported, followed by 0 to 39 Type I2a records for each affiliate, followed by 0 or 1 Type I2a record for the total services purchased. One Type I2b record to show the total number of services sold to affiliates reported, followed by 0 to 39 Type I2b records for each affiliate, followed by 0 or 1 Type I2b record for the total services sold. Each record displays data regarding the purchase of services from or sales of services to affiliates. See pages 79, 83-85 for record layout.

Record Type I3	Pension Cost Data Record	88 Type I3 records per file. One record for each of the 88 rows of pension cost reported. Each record displays end-of-year amounts for the current and previous reporting periods for each major pension plan used. See pages 79 & 86 for record layout.
Record Type I4	Operating Other Taxes (Account 7240) Data Record	One Type I4 record to provide data on taxes paid to the U. S. Government, followed by one Type I4 record for each state or jurisdiction reported. Include a Type I4 record for total company data, even if there is only one state row reported, followed by one Type I4 record for the amount of taxes paid to a jurisdiction but charged to construction, followed by one Type I4 record for the amount of other credits to account 7240, followed by one Type I4 record for the net amount charged to account 7240. Each record displays governmental jurisdiction to whom carriers paid taxes that were charged to account 7240. See pages 79, 87&88 for record layout.
Record Type I5	Prepaid Taxes and Tax Accruals Data Record	73 or less Type I5 records per file. One Type I5a record to show the total number of property taxes reported, followed by one to 6 Type I5a records for each property tax entry, followed by one Type I5a record for the total of all property taxes reported. One Type I5b record to show the total number of capital stock taxes reported, followed by one to 6 Type I5b records for each capital stock tax entry, followed by one Type I5b record for the total of all capital stock taxes reported. Continue including Type I5(c-i, inclusively) records for the rows with data to report pertaining to the seven remaining tax items listed on Table I5, respectively. Follow the pattern of the Type 15a and I5b records above. Include one Type I5 record to show the total of all categories of taxes reported. Each record displays the activity in prepaid taxed, income taxes accrued, and the other taxes accrued accounts. See pages 79, 89-91 for record layout.

Record Type I6	Special Charges Data Record	29 or less Type I6 records per file. One Type I6 record for the 6 single row entries, respectively. One Type I6a record to show the total number of abandoned contruction projects reported, followed by 0 to 9 Type I6a records for each project entry, followed by one Type I6a record to show the total amount reported for abandoned contruction projects. One Type I6b record to show the total number of penalties and fines reported, followed by 0 to 9 Type I6b records for each penality and fine entry, followed by one Type I6b record to show the total amount reported for penalties and fines. Include One Type I6 record to show the total of all special charges reported. Each record displays expenses for the special charges account. See pages 79, 92&93 for record layout.
Record Type I7	Donations or Payments for Services Rendered By Persons Other Than Employees Data Record	1292 or less type I7 records per file. One Type I7a record to show the total number of academia reported, followed by 0 to 97 Type I7a records for each academia entry, followed by one Type I7a record for the total payment to academia. One Type I7b record to show the total number of advertising and information services reported, followed by 0 to 397 Type I7b records for each advertising and information services entry, followed by one Type I7b record for total payment for advertising and information services. Continue including Type I7(c-1, inclusively) records for the rows with data to report pertaining to the 10 remaining services listed on Table I7, respectively. Follow the pattern of Type I7a and I7b records above. Each record displays payment to academia or payment for services rendered by persons other than employees. See pages 80, 94-96 for record layout.
Record Type C3	Confidential Treatment Record	One or more Type C3 records per file. Contains information to identify the data for which the carrier is seeking confidential treatment or to verify that the carrier is not seeking any confidential treatment. See pages 80, 97&98 for record layout.

Record Type F3	Footnote Record	One or more Type F3 records per file. Contains explanatory footnote text. See pages 80, 99&100 for record layout.
Record Type E4	Erratum Record	Zero Type E4 records in the first submission of a year's data. One or more Type E4 records per file in revisions filed to correct that year's submission. Contains information to identify the data which were corrected in this submission. See pages 80, 101&102 for record layout.
Record Type T1	Trailer Record	One Type T1 record. The last record of the Type I records only. Contains contact person, etc. See pages 80 & 103 for record layout.

SAMPLE RECORD LAYOUT FOR FILE "LBIL94US.U01"

The ruler lines included in this sample file are included only to assist the reader. Do not include ruler lines as lines in the automated report. See attached record layouts for a detailed description of each record type.

```
        1         2         3         4         5         6         7         8         9         0         1         1         1
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901
1001,"LBIL","H1  ","LBIL94US.U01",1994,0,19950315,"U", 1,"XQ"
1002,"LBIL","L1  ","FCC REPORT 43-02","Illinois Bell                ","                    ","Jan 1994 to Dec 1994","XQ"
1003,"LBIL","A1  ", 100.0,"Illnois Bell Telephone Company                                    ","XQ"
1004,"LBIL","A1  ", 110.0,"05011989                                                          ","XQ"
1005,"LBIL","A1  ", 120.0,"IL                                                                ","XQ"
1006,"LBIL","A1a ", 125.0,2   ,"XQ"
1007,"LBIL","A1a ", 130.0,"IL                                                                ","XQ"
1008,"LBIL","A1a ", 131.0,"MI                                                                ","XQ"
1009,"LBIL","A1  ", 200.0,"01031976                                                          ","XQ"
****
1014,"LBIL","A1b ", 245.0,1   ,"XQ"
1015,"LBIL","A1b ", 250.0,"Indiana Jones, 03011980                                           ","XQ"
1016,"LBIL","A1c ", 259.0,2   ,"XQ"
1017,"LBIL","A1c ", 260.0,"The Company was incorporated on Dec. 20, 1975, pursuant to an Illinois   ","XQ"
1018,"LBIL","A1c ", 261.0,"statute entitled 'Hurd's Ill. Rev. Stat.' (1975) approved April 1, 1980  ","XQ"
1019,"LBIL","A1c ", 262.0,"Ch. 32, secs, 1, 2, 3, and 4.                                      ","XQ"
1020,"LBIL","A1c ", 270.0,"On March 12,1980, the Company became a closed corporation pursuant to the","XQ"
1021,"LBIL","A1c ", 271.0,"Illinois Close Corporation Act, 'Ill. Rev. Stat.'(1990), Ch. 32, pars.   ","XQ"
1022,"LBIL","A1c ", 272.0,"1202 to 1210, inclusive.                                            ","XQ"
1023,"LBIL","A2  ", 100.0,"Joint                                                             ","XQ"
1024,"LBIL","A2a ", 145.0,1   ,"XQ"
1025,"LBIL","A2a ", 150.0,"BellAtlantic Corporation                                          ","XQ"
1026,"LBIL","A2a ", 151.0,"34 South Vacker Drive                                             ","XQ"
1027,"LBIL","A2a ", 152.0,"Philadephia, PA 60545                                             ","XQ"
1028,"LBIL","A2  ", 200.0,"Ownership of voting securities                                    ","XQ"
1029,"LBIL","A2  ", 210.0,"100% of capital stock                                             ","XQ"
1030,"LBIL","A2b ", 295.0,none,"XQ"
1031,"LBIL","A2c ", 395.0,none,"XQ"
1032,"LBIL","A3  ", 100.0,"N/A                                    ","NO
1033,"LBIL","A3a ",  95.0,2   ,"XQ"
1034,"LBIL","A3a ", 101.0,"Jane Doe          Detroit, Michigan  ","Director     ....
1035,"LBIL","A3a ", 102.0,"Mary Smith        Detroit, Michigan  ","Assistant Director   ....
1036,"LBIL","A3b ", 200.0,2   ,"XQ"
1037,"LBIL","A3b ", 201.0,"Richard Smith     Detroit, Michigan  ","Vice President - Marketing/Business ....
1038,"LBIL","A3b ", 202.0,"James Brown       Detroit, Michigan  ","Executive Vice President - Finance  ....
1039,"LBIL","A4  ",  95.0,2   ,"XQ"
1040,"LBIL","A4a ", 100.0,"Common Stock                                          ",   -99999,"XQ"
1041,"LBIL","A4a ", 105.0,1   ,"XQ"
1042,"LBIL","A4a ", 110.0,"Ameritech Corporation, Chicago, Illinois              ",    19500,"XQ"
****
1047,"LBIL","A4b ", 200.0,"Preferred Stock                                       ",   -99999,"XQ"
1048,"LBIL","A4b ", 205.0,2   ,"XQ"
1049,"LBIL","A4b ", 210.0,"Ameritech Audiotex Services, Inc., Chicago, Illinois  ",    17500,"XQ"
****
1055,"LBIL","A5a ", 100.0,2   ,"XQ"
1056,"LBIL","A5a ", 110.0,"Acquisition of building, COE equip. and outside plant located in the  ","XQ"
1057,"LBIL","A5a ", 111.0,"Broken Arrow Ok. Exchange Boundary to begin operations on June 1, 1977","XQ"
1058,"LBIL","A5a ", 112.0,"from the SW Bell Tel. Co St. Louis, MO on Dec. 31, 1988 for $268,593  ","XQ"
****
1062,"LBIL","A5b ", 200.0,none,"XQ"
1063,"LBIL","A5  ", 300.0,"YES                                                                 ","XQ"
```

**** Denotes missing records.
.... Denotes continuation of record.

SAMPLE RECORD LAYOUT FOR FILE "LBIL94US.U01"(cont'd)

```
                                                                                                                1
        1         2         3         4         5         6         7         8         9         0
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234
1064,"LBIL","A5c ",1000.0,1    ,"XQ"
1065,"LBIL","A5c ",1010.0,"Sole                                                                          ","XQ"
1066,"LBIL","A5c ",1011.0,"Detroit Bell, 1020 E. Broad Str., Detroit, Michigan  20567                    ","XQ"
1067,"LBIL","A5c ",1012.0,"Additional data as to how control was established, and any other               ","XQ"
1068,"LBIL","A5c ",1013.0,"pertinent data requisite to a clear understanding relating to control.","XQ"
1069,"LBIL","A5d ",1100.0,none,"XQ"
1070,"LBIL","A5e ",1200.0,none,"XQ"
1071,"LBIL","A5f ",1300.0,none,"XQ"
1072,"LBIL","A5g ",1400.0,none,"XQ"
1073,"LBIL","A5h ",1500.0,none,"XQ"
1074,"LBIL","A5i ",1600.0,1    ,"XQ"
1075,"LBIL","A5i ",1610.0,"Common Carrier, Allnet Communications Services, Inc.                           ","XQ"
1076,"LBIL","A5i ",1611.0,"09301990                                                                       ","XQ"
1077,"LBIL","A5i ",1612.0,"Enter a concise statement relative to the contract.                            ","XQ"
1078,"LBIL","A5i ",1613.0,"Continuation of description of the contract.                                   ","XQ"
1079,"LBIL","A5j ",1800.0,none,"XQ"
1080,"LBIL","A5k ", 400.0,2    ,"XQ"
1081,"LBIL","A5k ", 401.0,"01011991","Decrease in Interstate                ",  -156890,     -500,"XQ"
1082,"LBIL","A5k ", 402.0,"02011991","Increase in Switched Access           ",   234590,    10000,"XQ"
```

RECORD TYPE H1 - HEADER RECORD

Field	Item	Example	Position	Description
1	Record Number	1001	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. (See attached COSA Code Table) Format: Include quotation marks.
3	Record Type	"H1 "	13-18	Always contains the letter H capitalized and the number 1 with no space between them. Format: Include quotation marks.
4	File Name	"LBIL94US.U01"	20-33	The name of the ASCII file. Format: See page 1, paragraph B.4. Include quotation marks.
5	Year	1994	35-38	The year covered by the data.
6	Quarter #	0	40	Always contains the number 0 since this is an annual data file.
7	Data Entry Date	19950315	42-49	The date on which the data were last entered or revised. Format: YYYYMMDD.
8	Version	"U"	51-53	The version letter (P, C or U) capitalized (for Public, Confidential or Unrestricted) Format: Include quotation marks.
9	Submission #	1	55-56	0 for test data purposes only. 1 for first submission of a year's data. Higher numbers (2, 3, etc.) are used if needed for successive revisions to correct that year's submission. Format: Right justified and space filled.
10	End of Record Code	"XQ"	58-61	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: All fields are separated by commas.

The ruler lines (123456789 etc.) included below and following with sample records are included only to assist the reader. Do not include ruler lines as records in the electronic filing.

```
         1         2         3         4         5         6  . . . . .   Ruler line
123456789012345678901234567890123456789012345678901234567890  . . . . .   Ruler line
Sample record:
1001,"LBIL","H1 ","LBIL94US.U01",1994,0,19950315,"U", 1,"XQ"
```

RECORD TYPE L1 - LABEL RECORD

Field	Item	Example	Position	Description
1	Record Number	1002	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: Include quotation marks.
3	Record Type	"L1 "	13-18	Always contains the letter L capitalized and the number 1 with no space between them. Format: Include quotation marks.
4	Report Number	"FCC REPORT 43-02"	20-37	Always contains "FCC REPORT 43-02" capitalized. Format: Include quotation marks.
5	Carrier	"Illinois Bell " (spaces until pos. 70)	39-70	Name of the carrier. Format: Left justified and space filled. Include quotation marks.
6	Study Area	" "	72-93	Name of the study area. Usually blank, since this is an operating company level report. Format: Left justified and space filled. Include quotation marks.
7	Period Covered	"Jan 1994 to Dec 1994"	95-116	Period covered by the data. Format: "mmm yyyy to mmm yyyy" Include quotation marks.
8	End of Record Code	"XQ"	118-121	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: All fields are separated by commas.

```
         1         2         3         4         5         6         7         8         9         0         1         1
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901
Sample record:
1002,"LBIL","L1 ","FCC REPORT 43-02","Illinois Bell                ","                ","Jan 1994 to Dec 1994","XQ"
```

RECORD TYPE A1 SECTION ID RECORD

Field	Item	Example	Position	Description
1	Record Number	1006	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. (See attached COSA Code Table) Format: Include quotation marks.
3	Record Type	"A1a "	13-18	Always contains the letter A capitalized and the number 1 with no space between them. Format: Include quotation marks.
4	Section ID Row Number	125.0	20-25	Section row number to identify sections of a table that requires reporting multiple rows of data for a particular item in Record Type A1. Valid IDs: 125.0, 245.0, 259.0
5	Section Item Count	2 -or- none	27-30	Total number of rows or the total number of individual sets of rows in a section. If there are no data applicable to a section, enter the word 'none'. Valid Set of Rows: 130.0 to 199.0, 250.0 to 258.0, 260.0 to 292.0 Format: Left justified and space filled. Do not use quotation marks.
6	End of Record Code	"XQ"	32-35	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: All fields are separated by commas.

The ruler lines (123456789 etc.) included below and following with sample records are included only to assist the reader. Do not include ruler lines as records in the electronic filing.

```
        1         2         3     . . . . .    Ruler line
12345678901234567890123456789012345 . . . . .    Ruler line
Sample record:
1006,"LBIL","A1a ", 125.0,2   ,"XQ"

         - OR -

1006,"LBIL","A1a ", 125.0,none,"XQ"
```

RECORD TYPE A1 - IDENTITY OF RESPONDENT DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1007	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: Include quotation marks.
3	Record Type	"A1a "	13-18	Always contains the letter A capitalized and the number 1 with no space between them. Format: Include quotation marks.
4	Row Number	130.0	20-25	Row number as identified on pages 6 and 65-66 of the accompanying Report Definition. Valid ranges: 100.0 to 292.0 Include only those rows for which there are data to report. Format: Right justified and space filled, with one decimal place. Since all applicable numbers are integers, append .0 to the row number.
5	Column (b) data (spaces until pos. 101)	"IL "	27-101	This field contains the data corresponding to column (b) as shown in the Forms Section of the accompanying Report Definition. Format: Left justified and space filled. Include quotation marks.
6	End of Record Code	"XQ"	103-106	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: Separate all fields with commas.

Footnote records are needed if any data for the current period differ materially from those for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition. Add one or more Type F3 record(s) (after the remaining Type C3 record) containing footnote text to explain the specific circumstances.

```
         1         2         3         4         5         6         7         8         9         1
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456
Sample records:
1006,"LBIL","A1a ", 125.0,2    ,"XQ"
1007,"LBIL","A1a ", 130.0,"IL                                                                      ","XQ"
1008,"LBIL","A1a ", 131.0,"MI                                                                      ","XQ"
1009,"LBIL","A1  ", 200.0,"01031976                                                                ","XQ"
1010,"LBIL","A1  ", 210.0,"00000000                                                                ","XQ"
1011,"LBIL","A1  ", 220.0,"01091976                                                                ","XQ"
1012,"LBIL","A1  ", 230.0,"00000000                                                                ","XQ"
1013,"LBIL","A1  ", 240.0,"01151976                                                                ","XQ"
1014,"LBIL","A1b ", 245.0,1    ,"XQ"
1015,"LBIL","A1b ", 250.0,"Indiana Jones, 03011980                                                 ","XQ"
1016,"LBIL","A1c ", 259.0,2    ,"XQ"
1017,"LBIL","A1c ", 260.0,"The Company was incorporated on Dec. 20, 1975, pursuant to an Illinois  ","XQ"
1018,"LBIL","A1c ", 261.0,"statute entitled 'Hurd's Ill. Rev. Stat.' (1975) approved April 1, 1980 ","XQ"
1019,"LBIL","A1c ", 262.0,"Ch. 32, secs, 1, 2, 3, and 4.                                           ","XQ"
1020,"LBIL","A1c ", 270.0,"On March 12,1980, the Company became a closed corporation pursuant to the","XQ"
1021,"LBIL","A1c ", 271.0,"Illinois Closed Corporation Act, 'Ill. Rev. Stat.'(1990), Ch. 32, pars.  ","XQ"
1022,"LBIL","A1c ", 272.0,"1202 to 1210, inclusive.                                                  ","XQ"
```

RECORD TYPE A2 - SECTION ID RECORD

Field	Item	Example	Position	Description
1	Record Number	1024	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. (See attached COSA Code Table) Format: Include quotation marks.
3	Record Type	"A2a "	13-18	Always contains the letter A capitalized and the number 2 with no space between them. Format: Include quotation marks.
4	Section ID Row Number	145.0	20-25	Section row number to identify sections of a table that requires reporting multiple rows of data for a particular item in Record Type A2. Valid IDs: 145.0, 295.0, 395.0
5	Section Item Count	1 -or- none	27-30	Total number of rows or the total number of individual sets of rows in a section. If there are no data applicable to a section, enter the word 'none' Valid Set of Rows: 150.0 to 192.0, 300.0 to 390.0, 400.0 to 492.0 Format: Left justified and space filled. Do not use quotation marks.
6	End of Record Code	"XQ"	32-35	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: All fields are separated by commas.

The ruler lines (123456789 etc.) included below and following with sample records are included only to assist the reader. Do not include ruler lines as records in the electronic filing.

```
        1         2         3     . . . . .    Ruler line
12345678901234567890123456789012345 . . . . .    Ruler line
Sample record:
1024,"LBIL","A2a ", 145.0,1    ,"XQ"

          - OR -

1024,"LBIL","A2a ", 145.0,none,"XQ"
```

RECORD TYPE A2 - CONTROL OVER RESPONDENT DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1025	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: Include quotation marks.
3	Record Type	"A2a "	13-18	Always contains the letter A capitalized and the number 2 with no space between them. Format: Include quotation marks.
4	Row Number	150.0	20-25	Row number as identified on pages 7 and 67-68 of the accompanying Report Definition. Valid ranges: 100.0 to 492.0 Include only those rows for which there are data to report. Format: Right justified and space filled, with one decimal place. Since all applicable numbers are integers, append .0 to the row number.
5	Column (b) data (spaces until pos. 101)	"BellAtlantic Corpora"	27-101	This field contains the data corresponding to column (b) as shown in the Forms Section of the accompanying Report Definition. Format: Left justified and space filled. Include quotation marks.
6	End of Record Code	"XQ"	103-106	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: Separate all fields with commas.

Footnote records are needed if any data for the current period differ materially from those for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition. Add one or more Type F3 record(s) (after the remaining Type C3 record) containing footnote text to explain the specific circumstances.

```
         1         2         3         4         5         6         7         8         9         1
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456
Sample records:
1023,"LBIL","A2  ", 100.0,"Joint                                                                  ","XQ"
1024,"LBIL","A2a ", 145.0,1    ,"XQ"
1025,"LBIL","A2a ", 150.0,"Bell Atlantic Corporation                                              ","XQ"
1026,"LBIL","A2a ", 151.0,"34 South Vacker Drive                                                  ","XQ"
1027,"LBIL","A2a ", 152.0,"Philadephia, PA 60545                                                  ","XQ"
1028,"LBIL","A2  ", 200.0,"Ownership of voting securities                                         ","XQ"
1029,"LBIL","A2  ", 210.0,"100% of capital stock                                                  ","XQ"
1030,"LBIL","A2b ", 295.0,none,"XQ"
1031,"LBIL","A2c ", 395.0,none,"XQ"
                                - OR - (If carrier reports "SOLE" on Row 100)
         1         2         3         4         5         6         7         8         9         1
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456
Sample records:
1023,"LBIL","A2  ", 100.0,"Sole                                                                   ","XQ"
1024,"LBIL","A2  ", 110.0,"Bell Atlantic Corporation                                              ","XQ"
1025,"LBIL","A2  ", 111.0,"34 South Vacker Drive                                                  ","XQ"
1026,"LBIL","A2  ", 112.0,"Philadephia, Pa 60545                                                  ","XQ"
1027,"LBIL","A2a ", 145.0,none,"XQ"
1028,"LBIL","A2  ", 200.0,"Ownership of voting securities                                         ","XQ"
1029,"LBIL","A2  ", 210.0,"100% of capital stock                                                  ","XQ"
1030,"LBIL","A2b ", 295.0,none,"XQ"
1031,"LBIL","A2c ", 395.0,none,"XQ"
```

RECORD TYPE A3 - SECTION ID RECORD

Field	Item	Example	Position	Description
1	Record Number	1033	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. (See attached COSA Code Table) Format: Include quotation marks.
3	Record Type	"A3a "	13-18	Always contains the letter A capitalized and the number 3 with no space between them. Format: Include quotation marks.
4	Section ID Row Number	95.0	20-25	Section row number to identify sections of a table that requires reporting multiple rows of data for a particular item in Record Type A3. Valid IDs: 95.0, 200.0
5	Item Count	2 -or- none	27-30	Total number of rows or the total number of individual sets of rows in a section. If there are no data applicable to a section, enter the word none. Valid Set of Rows: 101.0 to 199.0 and 201.0 to 299.0 Format: Left justified and space filled, Do not use quotation marks
6	End of Record Code	"XQ"	32-35	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: All fields are separated by commas.

The ruler lines (123456789 etc.) included below and following with sample records are included only to assist the reader. Do not include ruler lines as records in the electronic filing.

```
        1         2         3     . . . . .    Ruler line
12345678901234567890123456789012345 . . . . .    Ruler line
Sample record:
1033,"LBIL","A3a ",  95.0,2   ,"XQ"

         - OR -

1033,"LBIL","A3a ",  95.0,none,"XQ"
```

RECORD TYPE A3 - BOARD OF DIRECTORS AND GENERAL OFFICERS DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1034	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: Include quotation marks.
3	Record Type	"A3a "	13-18	Always contains the letter A capitalized and the number 3 with no space between them. Format: Include quotation marks.
4	Row Number	101.0	20-25	Row number as identified on pages 8 and 69 of the accompanying Report Definition. Valid ranges: 100.0 to 299.0 Include only those rows for which there are data to report. Format: Right justified and space filled, with one decimal place. Since all applicable numbers are integers, append .0 to the row number.
5	Column (b) data (spaces until pos. 68)	"Jan Doe Detroit, Mi"	27-68	This field contains the data corresponding to column (b) as shown in the Forms Section of the accompanying Report Definition. Format: Left justified and space filled. Include quotation marks.
6	Column (c) data (spaces until pos. 130)	"Director "	70-130	Column (c) data. Format: See Field 5 above.
7	Column (d) data	"2000"	132-137	This field contains the data corresponding to column (d) as shown in the Forms Section of the accompanying Report Definition. Format: "yyyy" Enter "0000" in field if designated by N/A. Include quotation marks.
8	Column (e) data -or- (spaces until pos. 160)	"01011978 to Present " "N/A "	139-160	This field contains the data corresponding to column (e) as shown in the Forms Section of the accompanying Report Definition. Format: "mmddyyyy to mmddyyyy" Enter "N/A" in field if designated by N/A. Include quotation marks.
9	End of Record Code	"XQ"	162-165	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

RECORD TYPE A3 - BOARD OF DIRECTORS AND GENERAL OFFICERS DATA RECORD(continued)

Note: Separate all fields with commas.

Footnote records are needed if any data for the current period differ materially from those for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition. Add one or more Type F3 record(s) (after the remaining Type C3 record) containing footnote text to explain the specific circumstances.

```
         1         2         3         4         5         6         7         8         9         1
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345
Sample records:
1032,"LBIL","A3  ", 100.0,"N/A                                                    ","NO
1033,"LBIL","A3a ",  95.0,2    ,"XQ"
1034,"LBIL","A3a ", 101.0,"Jane Doe             Detroit, Michigan   ","Director
1035,"LBIL","A3a ", 102.0,"Mary Smith           Detroit, Michigan   ","Assistant Director
1036,"LBIL","A3b ", 200.0,2    ,"XQ"
1037,"LBIL","A3b ", 201.0,"Richard Smith        Detroit, Michigan   ","Vice President - Marketing/Business
1038,"LBIL","A3b ", 202.0,"James Brown          Detroit, Michigan   ","Executive Vice President - Finance


1   1         1         1         1         1         1
0   1         2         3         4         5         6
6789012345678901234567890123456789012345678901234567890123456789012345
Continuation of Sample records:
contin. of record 1032  ","0000","N/A                    ","XQ"

contin. of record 1034  ","2000","01011978 to Present ","XQ"
contin. of record 1035  ","1993","01011979 to Present ","XQ"

Development             ","1993","02011978 to Present ","XQ"
and External Affairs    ","1980","10311979 to 10311980","XQ"
```

- OR -

(If carrier enters "Yes" in column c for row 100.0 and submits a copy of its SEC Form 10-K/Annual Report with its ARMIS USOA Report)

```
         1         2         3         4         5         6         7         8         9         1
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345
Sample records:
1032,"LBIL","A3  ", 100.0,"N/A                                                    ","Yes

1   1         1         1         1         1         1
0   1         2         3         4         5         6
6789012345678901234567890123456789012345678901234567890123456789012345
Continuation of Sample records:
contin. of record 1032  ","0000","N/A                    ","XQ"
```

RECORD TYPE A4 - SECTION ID RECORD

Field	Item	Example	Position	Description
1	Record Number	1039	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. (See attached COSA Code Table) Format: Include quotation marks.
3	Record Type	"A4 "	13-18	Always contains the letter A capitalized and the number 4 with no space between them. Format: Include quotation marks.
4	Section ID Row Number	95.0	20-25	Section row number to identify sections of a table that requires reporting multiple rows of data for a particular item in Record Type A4. Valid IDs: 95.0, 105.0, 205.0, 305.0, 405.0, 505.0, 605.0, 705.0, 805.0, 905.0
5	Section Item Count	2 -or- none	27-30	Total number of rows or the total number of individual sets of rows in a section. If there are no data applicable to a section, enter the word 'none'. Valid Set of Rows: 100.0, 200.0, 300.0...900.0, 110.0 to 139.0, 210.0 to 239.0, 310.0 to 339.0, 410.0 to 439.0, 510.0 to 539.0, 610.0 to 639.0, 710.0 to 739.0, 810.0 to 839.0, 910.0 to 939.0 Format: Left justified and space filled. Do not use quotation marks
6	End of Record Code	"XQ"	32-35	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: All fields are separated by commas.

The ruler lines (123456789 etc.) included below and following with sample records are included only to assist the reader. Do not include ruler lines as records in the electronic filing.

```
        1         2         3    . . . . .    Ruler line
12345678901234567890123456789012345 . . . . .    Ruler line
Sample record:
1039,"LBIL","A4  ",  95.0,2   ,"XQ"

        - OR -

1039,"LBIL","A4  ",  95.0,none,"XQ"
```

RECORD TYPE A4 - STOCKHOLDERS DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1040	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: Include quotation marks.
3	Record Type	"A4a "	13-18	Always contains the letter A capitalized and the number 4 with no space between them. Format: Include quotation marks.
4	Row Number	100.0	20-25	Row number as identified on pages 9 and 70-71 of the accompanying Report Definition. Valid ranges: 100.0 to 970.0 Include only those rows for which there are data to report. Format: Right justified and space filled, with one decimal place. Since all applicable numbers are integers, append .0 to the row number.
5	Column (b) data	"Common Stock " -or- "N/A " (spaces until pos. 88)	27-88	This field contains the data corresponding to column (b) as shown in the Forms Section of the accompanying Report Definition. Format: Left justified and space filled. Include quotation marks.
6	Column (c) data	-99999	90-98	This field contains the data corresponding to column (c) as shown in the Forms Section of the accompanying Report Definition. Format: Right justified and space filled. Enter -99999 in all rows where a field is designated by N/A. All other fields must be populated. If there are no data applicable to an open field enter zero. Enter -88888 in integer rows on the "public version" diskette to indicate that confidential treatment has been requested.
7	End of Record Code	"XQ"	100-103	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: Separate all fields with commas.

Footnote records are needed if any data for the current period differ materially from those for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition. Add one or more Type F3 record(s) (after the remaining Type C3 record) containing footnote text to explain the specific circumstances.

```
        1         2         3         4         5         6         7         8         9         1
0
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123
Sample records:
1040,"LBIL","A4a ", 100.0,"Common Stock                                                    ",   -99999,"XQ"
1041,"LBIL","A4a ", 105.0,1    ,"XQ"
1042,"LBIL","A4a ", 110.0,"Ameritech Corporation, Chicago, Illinois                        ",    19500,"XQ"
1043,"LBIL","A4a ", 140.0,"N/A                                                             ",    19500,"XQ"
1044,"LBIL","A4a ", 150.0,"N/A                                                             ",        1,"XQ"
1045,"LBIL","A4a ", 160.0,"12311991                                                        ",   -99999,"XQ"
1046,"LBIL","A4a ", 170.0,"Preparation of this USOA Report for 1992                        ",   -99999,"XQ"
1047,"LBIL","A4b ", 200.0,"Preferred Stock                                                 ",   -99999,"XQ"
1048,"LBIL","A4b ", 205.0,2    ,"XQ"
1049,"LBIL","A4b ", 210.0,"Ameritech Audiotex Services, Inc., Chicago, Illinois            ",    17500,"XQ"
1050,"LBIL","A4b ", 211.0,"Tigon Corporation, Chicago, Illinois                            ",    14500,"XQ"
1051,"LBIL","A4b ", 240.0,"N/A                                                             ",    32000,"XQ"
1052,"LBIL","A4b ", 250.0,"N/A                                                             ",        2,"XQ"
1053,"LBIL","A4b ", 260.0,"12311991                                                        ",   -99999,"XQ"
1054,"LBIL","A4b ", 270.0,"Preparation of this USOA Report for 1992                        ",   -99999,"XQ"
```

RECORD TYPE A5- SECTION ID RECORD

Field	Item	Example	Position	Description
1	Record Number	1055	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. (See attached COSA Code Table) Format: Include quotation marks.
3	Record Type	"A5a "	13-18	Always contains the letter A capitalized and the number 5 with no space between them. Format: Include quotation marks.
4	Section ID Row Number	100.0	20-25	Section row number to identify sections of a table that requires reporting multiple rows of data for a particular item in Record Type A5. Valid IDs: 100.0, 200.0, 1000.0, 1100.0, 1200.0, 1300.0, 1400.0, 1500.0, 1600.0, 1800.0
5	Section Item Count	2 -or- none	27- 30	Total number of rows or the total number of individual sets of rows in a section. If there are no data applicable to a section, enter the word 'none'. Valid Set of Rows: 110.0 to 192.0, 210.0 to 292.0, 1010.0 to 1093.0, 1110.0 to 1193.0, 1210.0 to 1292.0, 1310.0 to 1393.0, 1410.0 to 1493.0, 1510.0 to 1592.0, 1610.0 to 1793.0, 1810.0 to 1892.0 Format: Left justified and space filled. Do not use quotation marks.
6	End of Record Code	"XQ"	32-35	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: All fields are separated by commas.

The ruler lines (123456789 etc.) included below and following with sample records are included only to assist the reader. Do not include ruler lines as records in the electronic filing.

```
        1         2         3     . . . . .    Ruler line
12345678901234567890123456789012345 . . . . .    Ruler line
Sample record:
1055,"LBIL","A5a ", 100.0,2    ,"XQ"

          - OR -

1055,"LBIL","A5a ", 100.0,none,"XQ"
```

RECORD TYPE A5 - IMPORTANT CHANGES DURING THE YEAR DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1056	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: Include quotation marks.
3	Record Type	"A5a "	13-18	Always contains the letter A capitalized and the number 5 with no space between them. Format: Include quotation marks.
4	Row Number	110.0	20-25	Row number as identified on pages 10-12 and 72-74 of the accompanying Report Definition. Valid ranges: 110.0 to 1892.0 Include only those rows for which there are data to report. Format: Right justified and space filled, with one decimal place. Since all applicable numbers are integers, append .0 to the row number.
5	Column (b) data (spaces until pos. 98)	"Acquisition of ..."	27-98	This field contains the data corresponding to column (b) as shown in the Forms Section of the accompanying Report Definition. Format: Left justified and space filled. Include quotation marks.
6	End of Record Code	"XQ"	100-103	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

RECORD TYPE A5 - INPORTANT CHANGES DURING THE YEAR DATA RECORD(continued)

Note: Separate all fields with commas.

Footnote records are needed if any data for the current period differ materially from those for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition. Add one or more Type F3 record(s) (after the remaining Type C3 record) containing footnote text to explain the specific circumstances.

```
         1         2         3         4         5         6         7         8         9         1
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123
Sample records:
1055,"LBIL","A5a ", 100.0,2    ,"XQ"
1056,"LBIL","A5a ", 110.0,"Acquisition of building, COE equip. and outside plant located in the  ","XQ"
1057,"LBIL","A5a ", 111.0,"Broken Arrow Ok. Exchange Boundary to begin operations on June 1, 1977","XQ"
1058,"LBIL","A5a ", 112.0,"from the SW Bell Tel. Co St. Louis, MO on Dec. 31, 1988 for $268,593  ","XQ"
1059,"LBIL","A5a ", 120.0,"Acquisition of building, COE equip. and outside plant located in the  ","XQ"
1060,"LBIL","A5a ", 121.0,"Broken Arrow Ok. Exchange Boundary to begin operations on June 1, 1977","XQ"
1061,"LBIL","A5a ", 122.0,"from the NYNEX Tel. Co Syracuse, NY on Jan. 31, 1989 for $367,693.50. ","XQ"
1062,"LBIL","A5b ", 200.0,none,"XQ"
1063,"LBIL","A5  ", 300.0,"YES                                                                ","XQ"
1064,"LBIL","A5c ",1000.0,1    ,"XQ"
1065,"LBIL","A5c ",1010.0,"Sole                                                             ","XQ"
1066,"LBIL","A5c ",1011.0,"Detroit Bell, 1020 E. Broad Str., Detroit, Michigan  20567       ","XQ"
1067,"LBIL","A5c ",1012.0,"Additional data as to how control was established, and any other  ","XQ"
1068,"LBIL","A5c ",1013.0,"pertinent data requisite to a clear understanding relating to control.","XQ"
1069,"LBIL","A5d ",1100.0,none,"XQ"
1070,"LBIL","A5e ",1200.0,none,"XQ"
1071,"LBIL","A5f ",1300.0,none,"XQ"
1072,"LBIL","A5g ",1400.0,none,"XQ"
1073,"LBIL","A5h ",1500.0,none,"XQ"
1074,"LBIL","A5i ",1600.0,1    ,"XQ"
1075,"LBIL","A5i ",1610.0,"Common Carrier, Allnet Communications Services, Inc.              ","XQ"
1076,"LBIL","A5i ",1611.0,"09301990                                                         ","XQ"
1077,"LBIL","A5i ",1612.0,"Enter a concise statement relative to the contract.              ","XQ"
1078,"LBIL","A5i ",1613.0,"Continuation of description of the contract.                     ","XQ"
1079,"LBIL","A5j ",1800.0,none,"XQ"

   - OR - (use following record layout for rows 1610-1623,
            if copies were filed with or furnished to the Commission)

1074,"LBIL","A5i ",1600.0,1    ,"XQ"
1075,"LBIL","A5i ",1610.0,"Common Carrier, Allnet Communications Services, Inc.              ","XQ"
1076,"LBIL","A5i ",1611.0,"09301990                                                         ","XQ"
1077,"LBIL","A5i ",1612.0,"Copies filed with or furnished to the Commission.                ","XQ"
```

RECORD TYPE A5 - SECTION ID RECORD

Field	Item	Example	Position	Description
1	Record Number	1080	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. (See attached COSA Code Table) Format: Include quotation marks.
3	Record Type	"A5k "	13-18	Always contains the letter A capitalized and the number 5 with no space between them. Format: Include quotation marks.
4	Section ID Row Number	400.0	20-25	Section row number to identify sections of a table that requires reporting multiple rows of data for a particular item in Record Type A5. Valid IDs: 400.0
5	Section Item Count	2 -or- none	27-30	Total number of rows or the total number of individual sets of rows in a section. If there are no data applicable to a section, enter the word 'none'. Valid Set of Rows: 401.0 to 999.0 Format: Left justified and space filled. Do not use quotation marks.
6	End of Record Code	"XQ"	32-35	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: All fields are separated by commas.

The ruler lines (123456789 etc.) included below and following with sample records are included only to assist the reader. Do not include ruler lines as records in the electronic filing.

```
        1         2         3     . . . . .     Ruler line
12345678901234567890123456789012345 . . . . .  Ruler line
Sample record:
1080,"LBIL","A5k ", 400.0,2   ,"XQ"

         - OR -

1080,"LBIL","A5k ", 400.0,none,"XQ"
```

RECORD TYPE A5 - INPORTANT CHANGES DURING THE YEAR DATA RECORD(continued)

Field	Item	Example	Position	Description
1	Record Number	1081	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: Include quotation marks.
3	Record Type	"A5k "	13-18	Always contains the letter A capitalized and the number 5 with no space between them. Format: Include quotation marks.
4	Row Number	401.0	20-25	Row number as identified on pages 13 and 75 of the accompanying Report Definition. Valid ranges: 401.0 to 999.0 Include only those rows for which there are data to report. Format: Right justified and space filled. with one decimal place. Since all applicable numbers are integers, append .0 to the row number.
5	Column (c) data	"01011991"	27-36	This field contains the data corresponding to column (c) as shown in the Forms Section of the accompanying Report Definition. Format: "mmddyyyy" Include quotation marks.
6	Column (d) data (spaces until pos. 79)	"Decrease in ...."	38-79	Column (d) data Format: Left justified and space filled. Include quotation marks.
7	Column (e) data	-156890	81-89	This field contains the data corresponding to column (e) as shown in the Forms Section of the accompanying Report Definition. Format: Right justified and space filled. Enter -99999 in all rows where a field is designated by N/A. All other fields must be populated. If there are no data applicable to an open field enter zero. Enter -88888 in interger rows on the "public version" diskette to indicate that confidential treatment has been requested.
8	Column (f) data	10000	91-99	Column (f) data. Format: See Field 7 above.
9	End of Record Code	"XQ"	101-104	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: Separate all fields with commas.

Footnote records are needed if any data for the current period differ materially from those for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition. Add one or more Type F3 record(s) (after the remaining Type C3 record) containing footnote text to explain the specific circumstances.

```
         1         2         3         4         5         6         7         8         9         1
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123
Sample records:
1080,"LBIL","A5k ", 400.0,2    ,"XQ"
1081,"LBIL","A5k ", 401.0,"01011991","Decrease in Interstate                    ",  -156890,     -500,"XQ"
1082,"LBIL","A5k ", 402.0,"02011991","Increase in Switched Access               ",   234590,    10000,"XQ"
```

SAMPLE RECORD LAYOUT FOR FILE "LBIL94US.UB1"

The ruler lines included in this sample file are included only to assist the reader. Do not include ruler lines as lines in the automated report. See attached record layouts for a detailed description of each record type.

```
      1         2         3         4         5         6         7         8         9         0         1         2
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456
1001,"LBIL","H1  ","LBIL94US.UB1",1994,0,19950315,"U", 1,"XQ"
1002,"LBIL","L1  ","FCC REPORT 43-02","Illinois Bell                ","                ","Jan 1994 to Dec 1994","XQ"
1003,"LBIL","B1  ",1130.0,     5432,"XQ"
****
1035,"LBIL","B1  ", 150.0,     3476,"XQ"
1036,"LBIL","P1  ",2001.0,    65432,     2716,     5432,     2716,    60000,"XQ"
****
1057,"LBIL","P1  ",2215.1,    15432,     2716,     5432,     2716,    10000,"XQ"
****
1089,"LBIL","P1  ", 260.0,    15432,     2716,     5432,     2716,    10000,"XQ"
1090,"LBIL","B1  ",3100.0,     5432,"XQ"
****
1144,"LBIL","B1  ", 490.0,     3476,"XQ"
1145,"LBIL","B1  ",5001.0,     5432,"XQ"
****
1192,"LBIL","B1  ", 530.0,     5432,"XQ"
1193,"LBIL","X1  ",6112.0,    21728,     5432,     5432,     5432,     5432,"XQ"
****
1283,"LBIL","X1  ", 730.0,    21728,   -99999,   -99999,   -99999,   -99999,"XQ"
1284,"LBIL","B1  ",7110.0,     5432,"XQ"
****
1326,"LBIL","B1  ", 860.0,     1452,"XQ"
1327,"LBIL","B2  ", 100.0,   -99999,   199210,"XQ"
1328,"LBIL","B2  ", 110.0,    15432,   -99999,"XQ"
****
1361,"LBIL","B2  ", 440.0,   -99999,   234159,"XQ"
1362,"LBIL","B3a ", 100.0,2   ,"XQ"
1363,"LBIL","B3a ", 101.0,"Ameritech Services, Inc.                ",    5432,    5432,    1358,    2716,    2716,....
1364,"LBIL","B3a ", 102.0,"Illinois Bell Administration Center Inc.",    1136,     432,    1020,     356,       0,....
1365,"LBIL","B3a ", 130.0,"N/A                                     ",    6568,    5864,    2378,    3072,    2716,....
1366,"LBIL","B3b ", 200.0,none,"XQ"
1367,"LBIL","B3  ", 240.0,"N/A                                     ",    6568,    5864,    2378,    3072,    2716,....
1368,"LBIL","B3  ", 250.0,"N/A                                     ",       0,       0,       0,       0,       0,....
1369,"LBIL","B3  ", 260.0,"N/A                                     ",    6568,    5864,    2378,    3072,    2716,....
1370,"LBIL","B3c ", 300.0,2   ,"XQ"
1371,"LBIL","B3c ", 301.0,"Ameritech Services, Inc.                ",    3863,       0,   -3863,       0,    1234,....
1372,"LBIL","B3c ", 302.0,"Illinois Bell Administration Center Inc.",      50,       0,       0,       0,     456,....
1373,"LBIL","B3c ", 330.0,"N/A                                     ",    3913,       0,       0,       0,    1680,....
1374,"LBIL","B3d ", 400.0,none,"XQ"
1375,"LBIL","B3  ", 440.0,"N/A                                     ",    3913,       0,       0,       0,    1680,....
1376,"LBIL","B3  ", 450.0,"N/A                                     ",       0,       0,       0,       0,       0,....
1377,"LBIL","B3  ", 460.0,"N/A                                     ",    3913,       0,       0,       0,    1680,....
1378,"LBIL","B4a ", 100.0,2   ,"XQ"
1379,"LBIL","B4a ", 101.0,"Ameritech Service, Inc.                 ",    5432,    4321,     432,     234,   10419,"XQ"
1380,"LBIL","B4a ", 102.0,"Ameritech Information Systems, Inc.     ",       0,       0,       0,       0,     190,"XQ"
1381,"LBIL","B4a ", 140.0,"N/A                                     ",    5432,    4321,     432,     234,   10609,"XQ"
1382,"LBIL","B4b ", 200.0,none,"XQ"
1383,"LBIL","B5  ", 100.0,  1243863,    56780,        0,     7890,        0,    54327,        0,     4801,  1249405,"XQ"
****
1421,"LBIL","B5  ", 490.0,  1243863,    56780,        0,     7890,        0,    54327,        0,     4801,  1249405,"XQ"
1422,"LBIL","B6  ", 240.0,"IL",    23450,     1234,        0,      500,     1280,    25464,    35678,      140,        0,....
1423,"LBIL","B6  ", 250.0,"IN",    18467,      234,      792,       40,    12785,        0,    30654,        0,      223,....
1424,"LBIL","B6  ", 910.0,"TO",    41917,     1468,      792,      540,    14065,    25464,    56118,      140,      223,....
1425,"LBIL","B7  ", 100.0,2   ,"XQ"
1426,"LBIL","B7  ", 240.0,"IL",2112.00,"Motor Vehicles                          ","R",    28.0,     5.32,     4.32,    12.00,
1427,"LBIL","B7  ", 240.0,"IL",2115.00,"Garage Work Equipment                   ","U",     6.3,     7.90,    13.00,     5.23,
1428,"LBIL","B7  ", 240.0,"IL",2215.30,"Other Electo-Mechanical Switching       ","U",    11.1,    11.32,     7.16,    11.32,
1429,"LBIL","B7  ", 245.0,"TO",-999.00,"N/A                                    "," ","N",-99999.0,-99999.00,-99999.00,-99999.00,
1430,"LBIL","B7  ", 250.0,"IN",2123.10,"Office Support Equipment               ","R",    38.0,     3.32,     6.33,     2.10,
1431,"LBIL","B7  ", 250.0,"IN",2231.10,"Radio                                  ","U",     5.3,     5.90,    18.00,     7.23,
1432,"LBIL","B7  ", 250.0,"IN",2231.20,"Other Radio Facilities                 ","R",    14.1,    12.34,     9.16,    12.32,
1433,"LBIL","B7  ", 255.0,"TO",-999.00,"N/A                                    "," ","N",-99999.0,-99999.00,-99999.00,-99999.00,
```

**** Denotes missing records.
.... Denotes continuation of record.

SAMPLE RECORD LAYOUT FOR FILE "LBIL94US.UB1"(cont'd)

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SAMPLE RECORD LAYOUT FOR FILE "LBIL94US.UB1"

The ruler lines included in this sample file are included only to assist the reader. Do not include ruler lines as lines in the automated report. See attached record layouts for a detailed description of each record type.

```
        1         2         3         4         5         6         7         8         9         0         1         1         1
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456
1001,"LBIL","H1  ","LBIL94US.UB1",1994,0,19950315,"U", 1,"XQ"
1002,"LBIL","L1  ","FCC REPORT 43-02","Illinois Bell                    ","                    ","Jan 1994 to Dec 1994","XQ"
1003,"LBIL","B1  ",1130.0,     5432,"XQ"
****
1035,"LBIL","B1  ", 150.0,     3476,"XQ"
1036,"LBIL","P1  ",2001.0,    65432,     2716,     5432,     2716,    60000,"XQ"
****
1057,"LBIL","P1  ",2215.1,    15432,     2716,     5432,     2716,    10000,"XQ"
****
1089,"LBIL","P1  ", 260.0,    15432,     2716,     5432,     2716,    10000,"XQ"
1090,"LBIL","B1  ",3100.0,     5432,"XQ"
****
1144,"LBIL","B1  ", 490.0,     3476,"XQ"
1145,"LBIL","B1  ",5001.0,     5432,"XQ"
****
1192,"LBIL","B1  ", 530.0,     5432,"XQ"
1193,"LBIL","X1  ",6112.0,    21728,     5432,     5432,     5432,     5432,"XQ"
****
1283,"LBIL","X1  ", 730.0,    21728,   -99999,   -99999,   -99999,   -99999,"XQ"
1284,"LBIL","B1  ",7110.0,     5432,"XQ"
****
1326,"LBIL","B1  ", 860.0,     1452,"XQ"
1327,"LBIL","B2  ", 100.0,   -99999,   199210,"XQ"
1328,"LBIL","B2  ", 110.0,    15432,   -99999,"XQ"
****
1361,"LBIL","B2  ", 440.0,   -99999,   234159,"XQ"
1362,"LBIL","B3a ", 100.0,2   ,"XQ"
1363,"LBIL","B3a ", 101.0,"Ameritech Services, Inc.                ",    5432,    5432,    1358,    2716,    2716,....
1364,"LBIL","B3a ", 102.0,"Illinois Bell Administration Center Inc.",    1136,     432,    1020,     356,       0,....
1365,"LBIL","B3a ", 130.0,"N/A                                     ",    6568,    5864,    2378,    3072,    2716,....
1366,"LBIL","B3b ", 200.0,none,"XQ"
1367,"LBIL","B3  ", 240.0,"N/A"                                     ",    6568,    5864,    2378,    3072,    2716,....
1368,"LBIL","B3  ", 250.0,"N/A"                                     ",       0,       0,       0,       0,       0,....
1369,"LBIL","B3  ", 260.0,"N/A"                                     ",    6568,    5864,    2378,    3072,    2716,....
1370,"LBIL","B3c ", 300.0,2   ,"XQ"
1371,"LBIL","B3c ", 301.0,"Ameritech Services, Inc.                ",    3863,       0,   -3863,       0,    1234,....
1372,"LBIL","B3c ", 302.0,"Illinois Bell Administration Center Inc.",      50,       0,       0,       0,     456,....
1373,"LBIL","B3c ", 330.0,"N/A                                     ",    3913,       0,       0,       0,    1680,....
1374,"LBIL","B3d ", 400.0,none,"XQ"
1375,"LBIL","B3  ", 440.0,"N/A"                                     ",    3913,       0,       0,       0,    1680,....
1376,"LBIL","B3  ", 450.0,"N/A"                                     ",       0,       0,       0,       0,       0,....
1377,"LBIL","B3  ", 460.0,"N/A"                                     ",    3913,       0,       0,       0,    1680,....
1378,"LBIL","B4a ", 100.0,2   ,"XQ"
1379,"LBIL","B4a ", 101.0,"Ameritech Service, Inc.                 ",    5432,    4321,     432,     234,   10419,"XQ"
1380,"LBIL","B4a ", 102.0,"Ameritech Information Systems, Inc.     ",       0,       0,       0,       0,     190,"XQ"
1381,"LBIL","B4a ", 140.0,"N/A                                     ",    5432,    4321,     432,     234,   10609,"XQ"
1382,"LBIL","B4b ", 200.0,none,"XQ"
1383,"LBIL","B5  ", 100.0,  1243863,    56780,        0,     7890,        0,    54327,        0,     4801,  1249405,"XQ"
****
1421,"LBIL","B5  ", 490.0,  1243863,    56780,        0,     7890,        0,    54327,        0,     4801,  1249405,"XQ"
1422,"LBIL","B6  ", 240.0,"IL",    23450,     1234,        0,      500,     1280,    25464,    35678,      140,        0,....
1423,"LBIL","B6  ", 250.0,"IN",    18467,      234,      792,       40,    12785,        0,    30654,        0,      223,....
1424,"LBIL","B6  ", 910.0,"TO",    41917,     1468,      792,      540,    14065,    25464,    56118,      140,      223,....
1425,"LBIL","B7  ", 100.0,2   ,"XQ"
1426,"LBIL","B7  ", 240.0,"IL",2112.00,"Motor Vehicles                    ","R",    28.0,     5.32,     4.32,    12.00,
1427,"LBIL","B7  ", 240.0,"IL",2115.00,"Garage Work Equipment             ","W",     6.3,     7.90,    13.00,     5.23,
1428,"LBIL","B7  ", 240.0,"IL",2215.30,"Other Electo-Mechanical Switching","W",    11.1,    11.32,     7.16,    11.32,
1429,"LBIL","B7  ", 245.0,"TO",-999.00,"N/A                              "," N",-99999.0,-99999.00,-99999.00,-99999.00,
1430,"LBIL","B7  ", 250.0,"IN",2123.10,"Office Support Equipment         ","R",    38.0,     3.32,     6.33,     2.10,
1431,"LBIL","B7  ", 250.0,"IN",2231.10,"Radio                           ","W",     5.3,     5.90,    18.00,     7.23,
1432,"LBIL","B7  ", 250.0,"IN",2231.20,"Other Radio Facilities          ","R",    14.1,    12.34,     9.16,    12.32,
1433,"LBIL","B7  ", 255.0,"TO",-999.00,"N/A                              "," N",-99999.0,-99999.00,-99999.00,-99999.00,
```

**** Denotes missing records.
.... Denotes continuation of record.

SAMPLE RECORD LAYOUT FOR FILE "LBIL94US.UB1"(cont'd)

```
      1         2         3         4         5         6         7         8         9         1         1         1
                                                                                               0         1         2
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456
1434,"LBIL","B8  ", 100.0,3    ,"XQ"
1435,"LBIL","B8  ", 101.0,2111.00,"Land                                          ",    3456,       0,    3456,     400,     1780
1436,"LBIL","B8  ", 102.0,2116.00,"Other Work Equipment                          ",     367,     190,     177,       0,       23
1437,"LBIL","B8  ", 103.0,2124.00,"General Purpose Computers                     ",       0,    3432,   -3432,     120,     1803
1438,"LBIL","B8  ", 140.0, -99999,"N/A                                           ",    4823,    3622,    3633,     520,     3606
1439,"LBIL","B9  ", 100.0,2    ,"XQ"
1440,"LBIL","B9  ", 101.0,"Compensated Absences                                  ",   13456,"XQ"
1441,"LBIL","B9  ", 102.0,"Engineering charges on contemplated projects          ",    2367,"XQ"
1442,"LBIL","B9  ", 150.0,"N/A                                                   ",   15823,"XQ"
1443,"LBIL","B10 ", 100.0,2    ,"XQ"
1444,"LBIL","B10 ", 101.0,"Visconsin Bell                                  ",   53456,     468,    1256,   54253,"XQ"
1445,"LBIL","B10 ", 102.0,"Ameritech Audiotex Services, Inc.               ",   14367,      90,       0,   14286,"XQ"
1446,"LBIL","B10 ", 160.0,"N/A                                             ",   67823,     558,    1256,   68521,"XQ"
1447,"LBIL","B11a", 100.0,2    ,"XQ"
1448,"LBIL","B11a", 101.0,"Series C, 3-1/4%      ","04011952","04011995",    3000,    -234,       0,    3.25,    4.25,"XQ
1449,"LBIL","B11a", 102.0,"Series D, 3-1/4%      ","07151955","07151995",     455,    -156,       0,    3.23,    3.50,"XQ
1450,"LBIL","B11a", 190.0,"N/A                   ","00000000","00000000",    3455,    -390,       0,-99999.00,-99999.00,"XQ
1451,"LBIL","B11b", 200.0,none,"XQ"
1452"LBIL","B11c", 300.0,1    ,"XQ"
1453,"LBIL","B11c", 301.0,"Series I, 6%          ","06011969","06011905",    1000,     234,     125,    6.23,    6.50,"XQ
1454,"LBIL","B11c", 310.0,"N/A                   ","00000000","00000000",    1000,     234,     125,-99999.00,-99999.00,"XQ
1455,"LBIL","B11d", 400.0,1    ,"XQ"
1456,"LBIL","B11d", 401.0,"Series K, 7-5/8%      ","12101973","12101904",    5000,    1234,     725,    7.23,    8.50,"XQ
1457,"LBIL","B11d", 410.0,"N/A                   ","00000000","00000000",    5000,    1234,     725,-99999.00,-99999.00,"XQ
1458,"LBIL","B11 ", 500.0,"N/A                   ","00000000","00000000",    9455,    1468,     850,-99999.00,-99999.00,"XQ
1459,"LBIL","B12 ", 100.0,    21728,     1234,     2345,     1234,     1234,    15678,"XQ"
****
1494,"LBIL","B12 ", 450.0,    15628,     5489,     1345,     3234,     4234,    17878,"XQ"
1495,"LBIL","B13 ", 100.0,2    ,"XQ"
1496,"LBIL","B13 ", 101.0,"Sale of Salvage Scrap Material                        ",   13456,"XQ"
1497,"LBIL","B13 ", 102.0,"Accrual for Intelligent Network Relesse Platform      ",    2367,"XQ"
1498,"LBIL","B13 ", 150.0,"N/A                                                   ",   15823,"XQ"
1499,"LBIL","B14 ", 100.0,2    ,"XQ"
1500,"LBIL","B14 ", 101.0,"Common Stock          ","YES",      20,      100,      163,      259,      422,       0,....
1501,"LBIL","B14 ", 102.0,"Preferred Stock       ","NO ",     100,      390,        0,     1234,     1234,     123,      39
1502,"LBIL","B14 ", 140.0,"N/A                   ","N/A",  -99999,   -99999,      163,     1493,     1656,  -99999,      39
1503,"LBIL","B15a", 100.0,2    ,"XQ"
1504,"LBIL","B15a", 101.0,"35-Year Debenture, 4.207%, due 12/3/91 ",     400,      100,      200,       50,     5000,....
1505,"LBIL","B15a", 102.0,"Medium Term Note, 9.35%, due 07/1/91   ",       0,        0,        0,        0,        0,....
1506,"LBIL","B15b", 120.0,none,"XQ"
1507,"LBIL","B15c", 200.0,1    ,"XQ"
1508,"LBIL","B15c", 201.0,"30-Year Debenture, 3.507%, due 11/30/92 ",     100,      200,      300,      100,     1000,      16
1509,"LBIL","B15d", 220.0,none,"XQ"
```

**** Denotes missing records.
.... Denotes continuation of record.

RECORD TYPE H1 - HEADER RECORD

Field	Item	Example	Position	Description
1	Record Number	1001	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. (See attached COSA Code Table) Format: Include quotation marks.
3	Record Type	"H1 "	13-18	Always contains the letter H capitalized and the number 1 with no space between them. Format: Include quotation marks.
4	File Name	"LBIL94US.UB1"	20-33	The name of the ASCII file. Format: See page 1, paragraph B.4 above. Include quotation marks.
5	Year	1994	35-38	The year covered by the data.
6	Quarter #	0	40	Always contains the number 0 since this is an annual data file.
7	Data Entry Date	19950315	42-49	The date on which the data were last entered or revised. Format: YYYYMMDD.
8	Version	"U"	51-53	The version letter (P, C or U) capitalized (for Public, Confidential or Unrestricted) Format: Include quotation marks.
9	Submission #	1	55-56	0 for test data purposes only. 1 for first submission of a year's data. Higher numbers (2, 3, etc.) are used if needed for successive revisions to correct that year's submission. Format: Right justified and space filled.
10	End of Record Code	"XQ"	58-61	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: All fields are separated by commas.

The ruler lines (123456789 etc.) included below and following with sample records are included only to assist the reader. Do not include ruler lines as records in the electronic filing.

```
         1         2         3         4         5         6 . . . . .Ruler line
12345678901234567890123456789012345678901234567890123456789012345678901 . . . . .Ruler line
Sample record:
1001,"LBIL","H1  ","LBIL94US.UB1",1994,0,19950315,"U", 1,"XQ"
```

RECORD TYPE L1 - LABEL RECORD

Field	Item	Example	Position	Description
1	Record Number	1002	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: Include quotation marks.
3	Record Type	"L1 "	13-18	Always contains the letter L capitalized and the number 1 with no space between them. Format: Include quotation marks.
4	Report Number	"FCC REPORT 43-02"	20-37	Always contains "FCC REPORT 43-02" capitalized. Format: Include quotation marks.
5	Carrier	"Illinois Bell " (spaces until pos. 68)	39-70	Name of the carrier. Format: Left justified and space filled. Include quotation marks.
6	Study Area	" "	72-93	Name of the study area. Usually blank, since this is an operating company level report. Format: Left justified and space filled. Include quotation marks.
7	Period Covered	"Jan 1994 to Dec 1994"	95-116	Period covered by the data. Format: "mmm yyyy to mmm yyyy" Include quotation marks.
8	End of Record Code	"XQ"	118-121	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: All fields are separated by commas.

```
         1         2         3         4         5         6         7         8         9         0         1         1         1
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901
Sample record:
1002,"LBIL","L1 ","FCC REPORT 43-02","Illinois Bell                 "," "                 ","Jan 1994 to Dec 1994","XQ"
```

RECORD TYPE B1 - ACCOUNT BALANCE DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1003	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: Include quotation marks.
3	Record Type	"B1 "	13-18	Always contains the letter B capitalized and the number 1 with no space between them. Format: Include quotation marks.
4	Row Number	1130.0	20-25	Row number as identified on Pages 14, 17, 43, 47-48, 77-78 & 115-118 of the accompanying Report Definition. Valid ranges: 120.0 to 150.0, 340.0 to 490.0, 510.0 to 530.0, 790.0, 830.0 to 860.0, 1120.0 to 1500.0, 3100.0 to 4550.0, 5001.0 to 5320.0, 7100.0 to 7990.0. Format: Right justified and space filled. with one decimal place. Since all applicable row numbers are integers, append .0 to each row number.
5	Account Balance data	5432	27-35	This field contains the ending balance or dollar amount recorded in the particular account. Format: Right justified and space filled. Enter -99999 in all rows where a field is designated by N/A. All other fields must be populated. If there are no data applicable to an open field enter zero. Enter -88888 in rows on the "public version" diskette to indicate that confidential treatment has been requested.
6	End of Record Code	"XQ"	37-40	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: Separate all fields with commas.

Footnote records are needed if any data for the current period differ materially from those for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition. Add one or more Type F3 record(s) (after the remaining Type C3 record) containing footnote text to explain the specific circumstances.

```
         1         2         3         4
1234567890123456789012345678901234567890
Sample records:
1003,"LBIL","B1 ",1130.0,      5432,"XQ"
1090,"LBIL","B1 ",3100.0,      5432,"XQ"
1145,"LBIL","B1 ",5001.0,      5432,"XQ"
1284,"LBIL","B1 ",7110.0,      5432,"XQ"
```

RECORD TYPE P1 - BALANCE/INCOME PERIOD ACTIVITY DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1036	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: Include quotation marks.
3	Record Type	"P1 "	13-18	Always contains the letter P capitalized and the number 1 with no space between them. Format: Include quotation marks.
4	Row Number	2001.0	20-25	Row number as identified on Pages 15-16 and 77-78 of the accompanying Report Definition. Valid ranges: 210.0 to 260.0, 2001.0 to 2690.0. Format: Right justified and space filled, with one decimal place. For row numbers that are integers, append .0 to the row number. For row numbers with one decimal place (e.g. 2215.1) use the row number as shown.
5	Column (ab) data	65432	27-35	This field contains the data corresponding to column (ab) as shown in the Forms Section of the accompanying Report Definition. Format: Right justified and space filled. Enter -99999 in all rows where a field is designated by N/A. All other fields must be populated. If there are no data applicable to an open field enter zero. Enter -88888 in rows on the "public version" diskette to indicate that confidential treatment has been requested.
6	Column (ac) data	2716	37-45	Column (ac) data Format: See Field 5 above.
7	Column (ad) data	5432	47-55	Column (ad) data Format: See Field 5 above.
8	Column (ae) data	2716	57-65	Column (ae) data Format: See Field 5 above.
9	Column (af) data	60000	67-75	Column (af) data Format: See Field 5 above.
10	End of Record Code	"XQ"	77-80	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: Separate all fields with commas.

Footnote records are needed if any data for the current period differ materially from those for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition. Add one or more Type F3 record(s) (after the remaining Type C3 record) containing footnote text to explain the specific circumstances.

```
        1         2         3         4         5         6         7         8
12345678901234567890123456789012345678901234567890123456789012345678901234567890
Sample records:
1036,"LBIL","P1 ",2001.0,    65432,    2716,     5432,     2716,    60000,"XQ"
1057,"LBIL","P1 ",2215.1,    15432,    2716,     5432,     2716,    10000,"XQ"
```

RECORD TYPE X1 - INCOME STATEMENT EXPENSE MATRIX DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1193	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: Include quotation marks.
3	Record Type	"X1 "	13-18	Always contains the letter X capitalized and the number 1 with no space between them. Format: Include quotation marks.
4	Row Number	6112.0	20-25	Row number as identified on pages 44-46 and 116-117 of the accompanying Report Definition. Valid ranges: 610.0 to 730.0, 6110.0 to 6790.0. Format: Right justified and space filled, with one decimal place. Since all applicable row numbers are integers, append .0 to each row number.
5	Column (ab) data	21728	27-35	This field contains the data corresponding to column (ab) as shown in the Forms Section of the accompanying Report Definition. Format: Right justified and space filled. Enter -99999 in all rows where a field is designated by N/A. All other fields must be populated. If there are no data applicable to an open field enter zero. Enter -88888 in rows on the "public version" diskette to indicate that confidential treatment has been requested.
6	Column (ac) data	5432	37-45	Column (ac) data Format: See Field 5 above.
7	Column (ad) data	5432	47-55	Column (ad) data Format: See Field 5 above.
8	Column (ae) data	5432	57-65	Column (ae) data Format: See Field 5 above.
9	Column (af) data	5432	67-75	Column (af) data Format: See Field 5 above.
10	End of Record Code	"XQ"	77-80	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: Separate all fields with commas.

A footnote record is needed for column (ac) to show the number of full-time and part-time employees at the end of the year.

Footnote records are also needed if any data for the current period differ materially from those for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition. Add one or more Type F3 record(s) (after the remaining Type C3 records) containing footnote text to explain the specific circumstances.

```
         1         2         3         4         5         6         7         8
12345678901234567890123456789012345678901234567890123456789012345678901234567890
Sample records:
1193,"LBIL","X1 ",6112.0,    21728,    5432,     5432,     5432,     5432,"XQ"
```

RECORD TYPE B2 - STATEMENT OF CASH FLOWS DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1327	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: Include quotation marks.
3	Record Type	"B2 "	13-18	Always contains the letter B capitalized and the number 2 with no space between them. Format: Include quotation marks.
4	Row Number	100.0	20-25	Row number as identified on pages 18 and 80-83 of the accompanying Report Definition. Valid ranges: 100.0 TO 440.0 Format: Right justified and space filled, with one decimal place. Since all applicable row numbers are integers, append .0 to the row number.
5	Column (b) data	-99999	27-35	This field contains the data corresponding to column (b) as shown in the Forms Section of the accompanying Report Definition. Format: Right justified and space filled. Enter -99999 in all rows where a field is designated by N/A. All other fields must be populated. If there are no data applicable to an open field enter zero. Enter -88888 in rows on the "public version" diskette to indicate that confidential treatment has been requested.
6	Column (c) data	199210	37-45	Column (c) data Format: See Field 5 above.
7	End of Record Code	"XQ"	47-50	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: Separate all fields with commas.

Footnote records are needed if any data for the current period differ materially from those for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition. Add one or more Type F3 record(s) (after the remaining Type C3 records) containing footnote text to explain the specific circumstances.

```
         1         2         3         4         5
12345678901234567890123456789012345678901234567890
Sample records:
1327,"LBIL","B2 ", 100.0,   -99999,   199210,"XQ"
1328,"LBIL","B2 ", 110.0,    15432,   -99999,"XQ"
```

RECORD TYPE B3 - SECTION ID RECORD

Field	Item	Example	Position	Description
1	Record Number	1362	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. (See attached COSA Code Table) Format: Include quotation marks.
3	Record Type	"B3a"	13-18	Always contains the letter B capitalized and the number 3 with no space between them. Format: Include quotation marks.
4	Section ID Row Number	100.0	20-25	Section row number to identify sections of a table that requires reporting multiple rows of data for a particular item in Record Type B3. Valid IDs: 100.0, 200.0, 300.0, 400.0
5	Section Item Count	2 -or- none	27-30	Total number of rows or the total number of individual sets of rows in a section. If there are no data applicable to a section, enter the word 'none'. Valid Set of Rows: 101.0 to 129.0, 201.0 to 229.0, 301.0 to 329.0, 401.0 to 429.0 Format: Left justified and space filled. Do not use quotation marks.
6	End of Record Code	"XQ"	32-35	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: All fields are separated by commas.

The ruler lines (123456789 etc.) included below and following with sample records are included only to assist the reader. Do not include ruler lines as records in the electronic filing.

```
        1         2         3     . . . . .    Ruler line
12345678901234567890123456789012345 . . . . .    Ruler line
Sample record:
1362,"LBIL","B3a ", 100.0,2   ,"XQ"

         - OR -

1362,"LBIL","B3a ", 100.0,none,"XQ"
```

RECORD TYPE B3 - INVESTMENTS IN AFFILIATES AND OTHER COMPANIES(PART I)-DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1363	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: Include quotation marks.
3	Record Type	"B3a "	13-18	Always contains the letter B capitalized and the number 3 with no space between them. Format: Include quotation marks.
4	Row Number	101.0	20-25	Row number as identified on pages 19-21 and 84-85 of the accompanying Report Definition. Valid ranges: 101.0 to 260.0. Include only those rows for which there are data to report. Format: Right justified and space filled, with one decimal place. Since all applicable row numbers are integers, append .0 to each row number
5	Column (b) data	"Ameritech Services, Inc." - OR - "N/A " (spaces until pos. 68)	27-68	This field contains the data corresponding to column (b) as shown in the Forms Section of the accompanying Report Definition. Do NOT override designated N/As. Format: Left justified and space filled. Include quotation marks.
6	Column (c) data	5432	70-78	This field contains the data corresponding to column (c) as shown in the Forms Section of the accompanying Report Definition. Do NOT override designated N/As. Format: Right justified and space filled. Enter -99999 in all rows where a field is designated by N/A. All other fields must be populated. If there are no data applicable to an open field enter zero. Enter -88888 in integer rows on the "public version" diskette to indicate that confidential treatment has been requested.
7	Column (d) data	5432	80-88	Column (d) data Format: See Field 6 above.
8	Column (e) data	1358	90-98	Column (e) data Format: See Field 6 above.
9	Column (f) data	1358	100-108	Column (f) data Format: See Field 6 above.
10	Column (g) data	2716	110-118	Column (g) data Format: See Field 6 above.
11	Column (h) data	16296	120-128	Column (h) data Format: See Field 6 above.
12	Column (i) data	3197	130-138	Column (i) data Format: See Field 6 above.
13	Column (j) data	2242	140-148	Column (j) data Format: See Field 6 above.
14	Column (k) data	1404	150-158	Column (k) data Format: See Field 6 above.
15	Column (l) data	4035	160-168	Column (l) data Format: See Field 6 above.

RECORD TYPE B3 - INVESTMENTS IN AFFILIATES AND OTHER COMPANIES(PART I)-DATA RECORD(continued)

Field	Item	Example	Position	Description
16	Column (m) data	0	170-178	Column (m) data Format: See Field 6 above.
17	Column (n) data	0	180-188	Column (n) data Format: See Field 6 above.
18	Column (o) data	0	190-198	Column (o) data Format: See Field 6 above.
19	Column (p) data	0	200-208	Column (p) data Format: See Field 6 above.
20	End of Record Code	"XQ"	210-213	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: Separate all fields with commas.

Footnote records are needed if any data for the current period differ materially from those for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition. Add one or more Type F3 record(s) (after the remaining Type C3 records) containing footnote text to explain the specific circumstances.

```
         1         2         3         4         5         6         7         8         9         0
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890
Sample records:
1362,"LBIL","B3a ", 100.0,2   ,"XQ"
1363,"LBIL","B3a ", 101.0,"Ameritech Services, Inc.                ",   5432,   5432,   1358,   2716,
1364,"LBIL","B3a ", 102.0,"Illinois Bell Administration Center Inc.",   1136,    432,   1020,    356,
1365,"LBIL","B3a ", 130.0,"N/A                                     ",   6568,   5864,   2378,   3072,
1366,"LBIL","B3b ", 200.0,none,"XQ"
1367,"LBIL","B3  ", 240.0,"N/A"                                    ,   6568,   5864,   2378,   3072,
1368,"LBIL","B3  ", 250.0,"N/A"                                    ,      0,      0,      0,      0,
1369,"LBIL","B3  ", 260.0,"N/A"                                    ,   6568,   5864,   2378,   3072,

1         1         1         1         1         1         1         1         1         2         2
1         2         3         4         5         6         7         8         9         0         1
012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901
Continuation of sample records:
     2716,    16296,     3197,     2242,     1404,     4035,        0,        0,        0,        0,"XQ"
        0,        0,      234,        0,      123,     1020,        0,        0,        0,        0,"XQ"
     2716,    16296,     3431,     2242,     1527,     5055,        0,        0,        0,        0,"XQ"

     2716,    16296,     3431,     2242,     1527,     5055,        0,        0,        0,        0,"XQ"
        0,        0,        0,        0,        0,        0,        0,        0,        0,        0,"XQ"
     2716,    16296,     3431,     2242,     1527,     5055,        0,        0,        0,        0,"XQ"
```

RECORD TYPE 83 - INVESTMENTS IN AFFILIATES AND OTHER COMPANIES(PART II) DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1370	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: Include quotation marks.
3	Record Type	"83c"	13-18	Always contains the letter B capitalized and the number 3 with no space between them. Format: Include quotation marks.
4	Row Number	301.0	20-25	Row number as identified on pages 22-24 and 85 of the accompanying Report Definition. Valid ranges: 301.0 to 460.0. Include only those rows for which there are data to report. Format: Right justified and space filled, with one decimal place. Since all applicable row numbers are integers, append .0 to each row number
5	Column (ab) data	"Ameritech Services, Inc." - OR - "N/A (spaces until pos. 68)	27-68	This field contains the data corresponding to column (ab) as shown in the Forms Section of the accompanying Report Definition. Do NOT override designated N/As. Format: Left justified and space filled. Include quotation marks.
6	Column (ac) data	3863	70-78	This field contains the data corresponding to column (ac) as shown in the Forms Section of the accompanying Report Definition. Do NOT override designated N/As. Format: Right justified and space filled Enter -99999 in all rows where a field is designated by N/A. All other fields must be populated. If there are no data applicable to an open field enter zero. Enter -88888 in integer rows on the "public version" diskette to indicate that confidential treatment has been requested.
7	Column (ad) data	0	80-88	Column (ad) data Format: See Field 6 above.
8	Column (ae) data	-3863	90-98	Column (ae) data Format: See Field 6 above.
9	Column (af) data	0	100-108	Column (af) data Format: See Field 6 above.
10	Column (ag) data	1234	110-118	Column (ag) data Format: See Field 6 above.
11	Column (ah) data	3567	120-128	Column (ah) data Format: See Field 6 above.
12	Column (ai) data	0	130-138	Column (ai) data Format: See Field 6 above.
13	Column (aj) data	4801	140-148	Column (aj) data Format: See Field 6 above.
14	Column (ak) data	3456	150-158	Column (ak) data Format: See Field 6 above.

RECORD TYPE B3 - INVESTMENTS IN AFFILIATES AND OTHER COMPANIES(PART II) DATA RECORD(continued)

Field	Item	Example	Position	Description
15	Column (al) data	2102	160-168	Column (al) data Format: See Field 6 above.
16	Column (am) data	1234	170-178	Column (am) data Format: See Field 6 above.
17	Column (an) data	6792	180-188	Column (an) data Format: See Field 6 above.
18	Column (ao) data	34732	190-198	Column (ao) data Format: See Field 6 above.
19	End of Record Code	"XQ"	200-203	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: Separate all fields with commas.

Footnote records are needed if any data for the current period differ materially from those for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition. Add one or more Type F3 record(s) (after the remaining Type C3 records) containing footnote text to explain the specific circumstances.

```
         1         2         3         4         5         6         7         8         9         1
                                                                                               0
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789
Sample records:
1362,"
1370,"LBIL","B3c ", 300.0,2   ,"XQ"
1371,"LBIL","B3c ", 301.0,"Ameritech Services, Inc.                ",    3863,      0,    -3863,      0,
1372,"LBIL","B3c ", 302.0,"Illinois Bell Administration Center Inc.",      50,      0,        0,      0,
1373,"LBIL","B3c ", 330.0,"N/A                                     ",    3913,      0,        0,      0,
1374,"LBIL","B3d ", 400.0,none,"XQ"
1375,"LBIL","B3  ", 440.0,"N/A"                                     ",    3913,      0,        0,      0,
1376,"LBIL","B3  ", 450.0,"N/A"                                     ",       0,      0,        0,      0,
1377,"LBIL","B3  ", 460.0,"N/A"                                     ",    3913,      0,        0,      0,
```

```
1         1         1         1         1         1         1         1         1         2
1         2         3         4         5         6         7         8         9         0
01234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123
Continuation of sample records:

     1234,     3567,        0,     4801,     3456,     2102,     1234,     6792,    34732,"XQ"
      456,     2320,        0,       33,      123,     1030,        0,        0,     2468,"XQ"
     1680,     5887,        0,     4834,     3579,     3132,     1234,     6792,    37200,"XQ"
     1680,     5887,        0,     4834,     3579,     3132,     1234,     6792,    37200,"XQ"
        0,        0,        0,        0,        0,        0,        0,        0,        0,"XQ"
     1680,     5887,        0,     4834,     3579,     3132,     1234,     6792,    37200,"XQ"
```

RECORD TYPE B4 - SECTION ID RECORD

Field	Item	Example	Position	Description
1	Record Number	1378	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. (See attached COSA Code Table) Format: Include quotation marks.
3	Record Type	"B4a"	13-18	Always contains the letter B capitalized and the number 4 with no space between them. Format: Include quotation marks.
4	Section ID Row Number	100.0	20-25	Section row number to identify sections of a table that requires reporting multiple rows of data for a particular item in Record Type B4. Valid IDs: 100.0, 200.0
5	Section Item Count	2 -or- none	27-30	Total number of rows or the total number of individual sets of rows in a section. If there are no data applicable to a section, enter the word 'none'. Valid Set of Rows: 101.0 to 139.0, 201.0 to 239.0 Format: Left justified and space filled. Do not use quotation marks.
6	End of Record Code	"XQ"	32-35	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: All fields are separated by commas.

The ruler lines (123456789 etc.) included below and following with sample records are included only to assist the reader. Do not include ruler lines as records in the electronic filing.

```
      1        2        3     . . . . .    Ruler line
12345678901234567890123456789012345 . . . . .    Ruler line
Sample record:
1378,"LBIL","B4a ", 100.0,2   ,"XQ"

        - OR -

1378,"LBIL","B4a ", 100.0,none,"XQ"
```

RECORD TYPE B4 - ANALYSIS OF ASSETS PURCHASED FROM OR SOLD TO AFFILIATES DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1379	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: Include quotation marks.
3	Record Type	"B4a "	13-18	Always contains the letter B capitalized and the number 4 with no space between them. Format: Include quotation marks.
4	Row Number	101.0	20-25	Row number as identified on pages 25 and 89 of the accompanying Report Definition. Valid ranges: 101.0 to 240.0 Include only those rows for which there are data to report. Format: Right justified and space filled, with one decimal place. Since all applicable row numbers are integers, append .0 to each row number
5	Column (b) data	"Ameritech Services, Inc."	27-68	This field contains the data corresponding to column (b) as shown in the Forms Section of the accompanying Report Definition. Do NOT overide designated N/As. Format: Left justified and space filled. Include quotation marks.
		- OR -		
		"N/A (spaces until pos. 68)	"	
6	Column (c) data	5432	70-78	This field contains the data corresponding to column (c) as shown in the Forms Sections of the accompanying Report Definition. Format: Right justified and space filled. Enter -99999 in integer rows where a field is designated by N/A. All other fields must be populated. If there are no data applicable to an open field enter zero. Enter -88888 in integer rows on the "public version" diskette to indicate that confidential treatment has been requested.
7	Column (d) data	4321	80-88	Column (d) data Format: See Field 6 above.
8	Column (e) data	432	90-98	Column (e) data Format: See Field 6 above.
9	Column (f) data	234	100-108	Column (f) data Format: See Field 6 above.
10	Column (g) data	10419	110-118	Column (g) data Format: See Field 6 above.

RECORD TYPE B4 - ANALYSIS OF ASSETS PURCHASED FROM OR SOLD TO AFFILIATES DATA RECORD (continued)

Field	Item	Example	Position	Description
11	End of Record Code	"XQ"	120-123	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: Separate all fields with commas.

Footnote records are needed if any data for the current period differ materially from those for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition. Add one or more Type F3 record(s) (after the remaining Type C3 records) containing footnote text to explain the specific circumstances.

```
         1         2         3         4         5         6         7         8         9         1
                                                                                               0
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890
Sample records:
1378,"LBIL","B4a ", 100.0,2    ,"XQ"
1379,"LBIL","B4a ", 101.0,"Ameritech Services, Inc.                ",    5432,    4321,     432,     234,
1380,"LBIL","B4a ", 102.0,"Ameritech Information Systems, Inc.     ",       0,       0,       0,       0,
1381,"LBIL","B4a ", 140.0,"N/A                                     ",    5432,    4321,     432,     234,
1382,"LBIL","B4b ", 200.0,none,"XQ"
```

```
1         1
1         2
012345678901234
Continuation of sample records:
    10419,"XQ"
      190,"XQ"
    10609,"XQ"
```

RECORD TYPE B5 - ANALYSIS OF ENTRIES IN ACCUMULATED DEPRECIATION DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1383	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: Include quotation marks.
3	Record Type	"B5 "	13-18	Always contains the letter B capitalized and the number 5 with no space between them. Format: Include quotation marks.
4	Row Number	100.0	20-25	Row number as identified on pages 26-29 and 91-93 of the accompanying Report Definition. Valid ranges: 100.0 to 490.0. Format: Right justified and space filled, with one decimal place. Since all applicable row numbers are integers, append .0 to each row number
5	Column (b) data	1243863	27-35	This field contains the data corresponding to column (b) as shown in the Forms Section of the accompanying Report Definition. Do NOT override designated N/As. Format: Right justified and space filled Enter -99999 all rows where a field is designated by N/A. All other fields must be populated. If there are no data applicable to an open field enter zero. Enter -88888 in integer rows on the "public version" diskette to indicate that confidential treatment has been requested.
6	Column (c) data	56780	37-45	Column (c) data Format: See Field 5 above.
7	Column (d) data	0	47-55	Column (d) data Format: See Field 5 above.
8	Column (e) data	7890	57-65	Column (e) data Format: See Field 5 above.
9	Column (f) data	0	67-75	Column (f) data Format: See Field 5 above.
10	Column (g) data	54327	77-85	Column (g) data Format: See Field 5 above.
11	Column (h) data	0	87-95	Column (h) data Format: See Field 5 above.
12	Column (i) data	4801	97-105	Column (i) data Format: See Field 5 above.
13	Column (j) data	1249405	107-115	Column (j) data Format: See Field 5 above.

RECORD TYPE B5 - ANALYSIS OF ENTRIES IN ACCUMULATED DEPRECIATION DATA RECORD(continued)

Field	Item	Example	Position	Description
14	End of Record Code	"XQ"	117-120	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: Separate all fields with commas.

Footnote records are needed if any data for the current period differ materially from those for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition. Add one or more Type F3 record(s) (after the remaining Type C3 records) containing footnote text to explain the specific circumstances.

```
         1         2         3         4         5         6         7         8         9         1
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456
Sample records:
1383,"LBIL","B5  ", 100.0,  1243863,    56780,        0,     7890,        0,    54327,        0,    4801,

   1        1
   1        2
78901234567890
Continuation of sample records:
  1249405,"XQ"
```

RECORD TYPE B6 - SUMMARY OF INVESTMENT AND ACCUMULATED DEPRECIATION BY JURISDICTION DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1422	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: Include quotation marks.
3	Record Type	"B6 "	13-18	Always contains the letter B capitalized and the number 6 with no space between them. Format: Include quotation marks.
4	Row Number	240.0	20-25	Row number as identified in the State Row Number and Codes Reference Table of the accompanying Report Definition. Valid ranges: 110.0 to 910.0 Format: Right justified and space filled, with one decimal place. Since all applicable numbers are integers, append .0 to the row number.
5	Column (a) data	"IL"	27-30	This field contains the state code corresponding to column (a) as shown on pages 30 and 94 of the accompanying Report Definition. See Reference Table for list of state codes. Format: Left justified and space filled. Include quotation marks.
6	Column (b) data	23450	32-40	This field contains the data corresponding to column (b) as shown in the Forms Section of the accompanying Report Definition. Format: Right justified and space filled. Enter -99999 in integer rows where a field is designated by N/A. All other fields must be populated. If there are no data applicable to an open field enter zero. Enter -88888 in integer rows on the "public version" diskette to indicate that confidential treatment has been requested.
7	Column (c) data	1234	42-50	Column (c) data Format: See Field 6 above.
8	Column (d) data	0	52-60	Column (d) data Format: See Field 6 above.
9	Column (e) data	500	62-70	Column (e) data Format: See Field 6 above.
10	Column (f) data	1280	72-80	Column (f) data Format: See Field 6 above.
11	Column (g) data	25464	82-90	Column (g) data Format: See Field 6 above.
12	Column (h) data	35678	92-100	Column (h) data Format: See Field 6 above.
13	Column (i) data	140	102-110	Column (i) data Format: See Field 6 above.
14	Column (j) data	0	112-120	Column (j) data Format: See Field 6 above.
15	Column (k) data	35678	122-130	Column (k) data Format: See Field 6 above.

RECORD TYPE B6 - SUMMARY OF INVESTMENT AND ACCUMULATED DEPRECIATION BY JURISDICTION
DATA RECORD(continued)

Field	Item	Example	Position	Description
16	Column (l) data	140	132-140	Column (l) data Format: See Field 6 above.
17	Column (m) data	36458	142-150	Column (m) data Format: See Field 6 above.
18	Column (n) data	130.00	152-160	This field contains the data corresponding to column (n) as shown in the Forms Section of the accompanying Report Definition. Format: Right justified and space filled. Enter as a ratio and round to two decimal places.
19	Column (o) data	150.00	162-170	Column (o) data Format: See Field 18 above.
20	End of Record Code	"XQ"	172-175	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: Separate all fields with commas.

Footnote records are needed if any data for the current period differ materially from those for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition. Add one or more Type F3 record(s) (after the remaining Type C3 record) containing footnote text to explain the specific circumstances.

```
         1         2         3         4         5         6         7         8         9         1
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890
Sample records:
1422,"LBIL","B6  ", 240.0,"IL",    23450,     1234,        0,      500,     1280,    25464,    35678,
1423,"LBIL","B6  ", 250.0,"IN",    18467,      234,      792,       40,    12785,        0,    30654,
1424,"LBIL","B6  ", 910.0,"TO",    41917,     1468,      792,      540,    14065,    25464,    56118,

         1         1         1         1         1         1         1
         1         2         3         4         5         6         7
234567890123456789012345678901234567890123456789012345678901234567890123456789012345
Continuation of sample records:
      140,        0,    35678,      140,    36458,   130.00,  150.00,"XQ"
        0,      223,    16000,     1201,    18256,     0.00,    0.00,"XQ"
      140,      223,    51678,     1341,    54714,   130.00,  150.00,"XQ"
```

RECORD TYPE B7 - SECTION ID RECORD

Field	Item	Example	Position	Description
1	Record Number	1425	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. (See attached COSA Code Table) Format: Include quotation marks.
3	Record Type	"B7 "	13-18	Always contains the letter B capitalized and the number 7 with no space between them. Format: Include quotation marks.
4	Section ID Row Number	100.0	20-25	Section row number to identify sections of a table that requires reporting multiple rows of data for a particular item in Record Type B7. Valid ID: 100.0
5	Section Item Count	2 -or- none	27-30	Total number of rows or the total number of individual sets of rows in a section. If there are no data applicable to a section, enter the word 'none'. Valid Set of Rows: 110.0 to 810.0 Format: Left justified and space filled. Do not use quotation marks.
6	End of Record Code	"XQ"	32-35	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: All fields are separated by commas.

The ruler lines (123456789 etc.) included below and following with sample records are included only to assist the reader. Do not include ruler lines as records in the electronic filing.

```
        1         2         3     . . . . .    Ruler line
12345678901234567890123456789012345 . . . . .    Ruler line
Sample record:
1425,"LBIL","B7 ", 100.0,2   ,"XQ"

         - OR -

1425,"LBIL","B7 ", 100.0,none,"XQ"
```

RECORD TYPE B7 - BASES OF CHARGES FOR DEPRECIATION DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1426	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: Include quotation marks.
3	Record Type	"B7 "	13-18	Always contains the letter B capitalized and the number 7 with no space between them. Format: Include quotation marks.
4	Row Number	240.0	20-25	Row number as identified in the State Row Numbers and Codes Reference Table of the accompanying Report Definition. Valid ranges: 110.0 to 810.0 Format: Right justified and space filled, with one decimal place. Since all applicable numbers are integers, append .0 to the row number.
5	Column (a) data	"IL"	27-30	This field contains the state code corresponding to column (a) as shown on pages 31 and 96 of the accompanying Report Definition. See Reference Table for list of state codes. Format: Left justified and space filled. Include quotation marks.
6	Column (b) data	2112.00	32-38	This field contains the data corresponding to column (b) as shown in the Forms Section of the accompanying Report Definition. Do NOT override designated N/As. Format: ####.## Enter an account number using two decimal places. Enter -99999 if field is designated by N/A. Do not Include quotation marks.
7	Column (c) data	"Motor Vehicles" - or - "N/A " (spaces unil pos. 81)	40-81	This field contains the data corresponding to column (c) as shown in the Forms Section of the accompanying Report Definition. Do NOT override designated N/As. Format: Left justified and space filled. Include quotation marks.
8	Column (d) data	"W" -or- "R"	83-85	This field contains the data corresponding to column (d) as shown in the Forms Section of the accompanying Report Definition. Do NOT override designated N/As. Valid entry: "W" (whole life), "R" (remaining life), "N" (N/A) Format: Enter "N" if field is designated by N/A. Capitalize and Include quotation marks.
9	Column (e) data	28.0	87-94	This field contains the data corresponding to column (e) as shown in the Forms Section of the accompanying Report Definition. Format: Right justified and space filled. Enter -99999.0 or -99999.00 in decimal rows where a field is designated by N/A. All other fields must be populated. If there are no data applicable to an open field enter zero. Enter -88888.0 or -88888.00 in decimal rows on the "public version" diskette to indicate that confidential treatment has been requested.

RECORD TYPE B7 - BASES OF CHARGES FOR DEPRECIATION DATA RECORD(continued)

Field	Item	Example	Position	Description
10	Column (f) data	5.32	96-104	This field contains the data corresponding to column (f) as shown in the Forms Section of the accompanying Report Definition. Format: Enter as a percent and round to two decimal places. See Field 9 format above if field is designated by N/A.
11	Column (g) data	4.32	106-114	Column (g) data Format: See Field 10 above.
12	Column (h) data	12.00	116-124	Column (h) data Format: See Field 10 above.
13	Column (i) data	56780	126-134	Column (i) data Format: See Field 9 above.
14	Column (j) data	23456	136-144	Column (j) data Format: See Field 9 above.
15	Column (k) data	2468	146-154	Column (k) data Format: See Field 9 above.
16	Column (l) data	17.40	156-164	Column (l) data Format: See Field 10 above.
17	End of Record Code	"XQ"	166-169	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: Separate all fields with commas.

Footnote records are needed if any data for the current period differ materially from those for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition. Add one or more Type F3 record(s) (after the remaining Type C3 record) containing footnote text to explain the specific circumstances.

```
         1         2         3         4         5         6         7         8         9         1
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345
Sample records:
1425,"LBIL","B7  ", 100.0,2   ,"XQ"
1426,"LBIL","B7  ", 240.0,"IL",2112.00,"Motor Vehicles                                ","R",    28.0,    5.32,
1427,"LBIL","B7  ", 240.0,"IL",2115.00,"Garage Work Equipment                         ","W",     6.3,    7.90,
1428,"LBIL","B7  ", 240.0,"IL",2215.30,"Other Electo-Mechanical Switching             ","W",    11.1,   11.32,
1429,"LBIL","B7  ", 245.0,"TO", -99999,"N/A                                           "," N",-99999.0,-99999.00,
1430,"LBIL","B7  ", 250.0,"IN",2123.10,"Office Support Equipment                      ","R",    38.0,    3.32,
1431,"LBIL","B7  ", 250.0,"IN",2231.10,"Radio                                         ","W",     5.3,    5.90,
1432,"LBIL","B7  ", 250.0,"IN",2231.20,"Other Radio Facilities                        ","R",    14.1,   12.34,
1433,"LBIL","B7  ", 255.0,"TO", -99999,"N/A                                           "," N",-99999.0,-99999.00,

    1         1         1         1         1         1
    1         2         3         4         5         6
6789012345678901234567890123456789012345678901234567890123456789
        Continuation of sample records:
    4.32,    12.00,    56780,    23456,     2468,    17.40,"XQ"
   13.00,     5.23,     7390,     3200,      246,     5.40,"XQ"
    7.16,    11.32,     7716,     1236,    36972,    11.00,"XQ"
-99999.00,-99999.00,    71886,    27892,   -99999,-99999.00,"XQ"
    6.33,     2.10,    58980,    12456,     4567,    14.40,"XQ"
   18.00,     7.23,     3692,     5600,      890,     7.40,"XQ"
    9.16,    12.32,     2367,     9101,    12562,    12.00,"XQ"
-99999.00,-99999.00,    65039,    27157,   -99999,-99999.00,"XQ"
```

RECORD TYPE 88 - SECTION ID RECORD

Field	Item	Example	Position	Description
1	Record Number	1434	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. (See attached COSA Code Table) Format: Include quotation marks.
3	Record Type	"88"	13-18	Always contains the letter B capitalized and the number 8 with no space between them. Format: Include quotation marks.
4	Section ID Row Number	100.0	20-25	Section row number to identify sections of a table that requires reporting multiple rows of data for a particular item in Record Type 88. Valid ID: 100.0
5	Section Item Count	3 -or- none	27-30	Total number of rows or the total number of individual sets of rows in a section. If there are no data applicable to a section, enter the word 'none'. Valid Set of Rows: 101.0 to 130.0 Format: Left justified and space filled. Do not use quotation marks
6	End of Record Code	"XQ"	32-35	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: All fields are separated by commas.
The ruler lines (123456789 etc.) included below and following with sample records are include only to assist the reader. Do not include ruler lines as records in the electronic filing.

```
        1         2         3     . . . . .    Ruler line
12345678901234567890123456789012345 . . . . .    Ruler line
Sample record:
1434,"LBIL","B8  ", 100.0,3   ,"XQ"

         - OR -

1434,"LBIL","B8  ", 100.0,none,"XQ"
```

RECORD TYPE 88 - CAPITAL LEASES DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1435	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: Include quotation marks.
3	Record Type	"88 "	13-18	Always contains the letter B capitalized and the number 8 with no space between them. Format: Include quotation marks.
4	Row Number	101.0	20-25	Row number as identified on pages 32 and 98 of the accompanying Report Definition. Valid ranges: 101.0 to 140.0 Include only those rows for which there are data to report. Format: Right justified and space filled, with one decimal place. Since all applicable numbers are integers, append .0 to the row number.
5	Column (b) data	2111.00	27-33	This field contains the data corresponding to column (b) as shown in the Forms Section of the accompanying Report Definition. Do NOT override designated N/As. Format: ####.## Enter an account number using two decimal places. Enter -99999 if field is designated by N/A.
6	Column (c) data	"Land....." -or- "N/A " (spaces until pos. 76)	35-76	This field contains the data corresponding to column (c) as shown in the Forms Section of the accompanying Report Definition. Format: Left justified and space filled. Include quotation marks.
7	Column (d) data	3456	78-86	This field contains the data corresponding to column (d) as shown on Forms Section of the accompanying Report Definition. Format: Right justified and space filled. Enter -99999 in integer rows where a field is designated by N/A. All other fields must be populated. If there are no data applicable to an open field enter zero. Enter -88888 in integer rows on the "public version" diskette to indicate that confidential treatment has been requested.
8	Column (e) data	0	88-96	Column (e) data Format: See Field 7 above.
9	Column (f) data	3456	98-106	Column (f) data Format: See Field 7 above.
10	Column (g) data	400	108-116	Column (g) data Format: See Field 7 above.
11	Column (h) data	1780	118-126	Column (h) data Format: See Field 7 above.
12	Column (i) data	23456	128-136	Column (i) data Format: See Field 7 above.
13	Column (j) data	2468	138-146	Column (j) data Format: See Field 7 above.

RECORD TYPE B8 - CAPITAL LEASES DATA RECORD(continued)

Field	Item	Example	Position	Description
14	Column (k) data	0	148-156	Column (k) data Format: See Field 7 above.
15	End of Record Code	"XQ"	158-161	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: Separate all fields with commas.

Footnote records are needed if any data for the current period differ materially from those for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition. Add one or more Type F3 record(s) (after the remaining Type C3 record) containing footnote text to explain the specific circumstances.

```
         1         2         3         4         5         6         7         8         9         1
                                                                                                   0
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567
Sample records:
1434,"LBIL","B8  ", 100.0,3   ,"XQ"
1435,"LBIL","B8  ", 101.0,2111.00,"Land                                    ",  3456,     0,    3456,
1436,"LBIL","B8  ", 102.0,2116.00,"Other Work Equipment                    ",   367,   190,     177,
1437,"LBIL","B8  ", 103.0,2124.00,"General Purpose Computers              ",     0,  3432,   -3432,
1438,"LBIL","B8  ", 140.0, -99999,"N/A                                    "  4823,  3622,    3633,

  1         1         1         1         1         1
  1         2         3         4         5         6
8901234567890123456789012345678901234567890123456789012345678901
Continuation of sample records:
      400,     1780,    23456,     2468,        0,"XQ"
        0,       23,     7390,     3200,      246,"XQ"
      120,     1803,    30846,     5668,      246,"XQ"
      520,     3606,    61792,    11336,      492,"XQ"
```

RECORD TYPE B9 - SECTION ID RECORD

Field	Item	Example	Position	Description
1	Record Number	1439	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. (See attached COSA Code Table) Format: Include quotation marks.
3	Record Type	"B9"	13-18	Always contains the letter B capitalized and the number 9 with no space between them. Format: Include quotation marks.
4	Section ID Row Number	100.0	20-25	Section row number to identify sections of a table that requires reporting multiple rows of data for a particular item in Record Type B9. Valid ID: 100.0
5	Section Item Count	2 -or- none	27-30	Total number of rows or the total number of individual sets of rows in a section. If there are no data applicable to a section, enter the word 'none'. Valid Set of Rows: 101.0 to 140.0 Format: Left justified and space filled. Do not use quotation marks
6	End of Record Code	"XQ"	32-35	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: All fields are separated by commas.

The ruler lines (123456789 etc.) included below and following with sample records are included only to assist the reader. Do not include ruler lines as records in the electronic filing.

```
        1         2         3    . . . . .    Ruler line
12345678901234567890123456789012345 . . . . .    Ruler line
Sample record:
1439,"LBIL","B9  ", 100.0,2   ,"XQ"

         - OR -

1439,"LBIL","B9  ", 100.0,none,"XQ"
```

RECORD TYPE B9 - DEFERRED CHARGES DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1440	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: Include quotation marks.
3	Record Type	"B9 "	13-18	Always contains the letter B capitalized and the number 9 with no space between them. Format: Include quotation marks.
4	Row Number	101.0	20-25	Row number as identified on pages 33 and 100 of the accompanying Report Definition. Valid ranges: 101.0 to 150.0 Include only those rows for which there are data to report. Format: Right justified and space filled, with one decimal place. Since all applicable numbers are integers, append .0 to the row number.
5	Column (b) data	"Compensated Absences" -or- "N/A " (spaces until pos. 83)	27-83	This field contains the data corresponding to column (b) as shown in the Forms Section of the accompanying Report Definition. Do NOT override designated N/As. Format: Left justified and space filled. Include quotation marks.
6	Column (c) data	13456	85-93	This field contains the data corresponding to column (c) as shown in the Forms Section of the accompanying Report Definition. Format: Right justified and space filled. Enter -99999 in integer rows where a field is designated by N/A. All other fields must be populated. If there are no data applicable to an open field enter zero. Enter -88888 in integer rows on the "public version" diskette to indicate that confidential treatment has been requested.
7	End of Record Code	"XQ"	95-98	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: Separate all fields with commas.

Footnote records are needed if any data for the current period differ materially from those for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition. Add one or more Type F3 record(s) (after the remaining Type C3 record) containing footnote text to explain the specific circumstances.

```
        1         2         3         4         5         6         7         8         9
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678
Sample records:
1439,"LBIL","B9  ", 100.0,2    ,"XQ"
1440,"LBIL","B9  ", 101.0,"Compensated Absences                                        ",   13456,"XQ"
1441,"LBIL","B9  ", 102.0,"Engineering charges on contemplated projects                ",    2367,"XQ"
1442,"LBIL","B9  ", 150.0,"N/A                                                         ",   15823,"XQ"
```

RECORD TYPE B10 - SECTION ID RECORD

Field	Item	Example	Position	Description
1	Record Number	1443	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. (See attached COSA Code Table) Format: Include quotation marks.
3	Record Type	"B10"	13-18	Always contains the letter B capitalized and the number 10 with no space between them. Format: Include quotation marks.
4	Section ID Row Number	100.0	20-25	Section row number to identify sections of a table that requires reporting multiple rows of data for a particular item in Record Type B10. Valid ID: 100.0
5	Section Item Count	2 -or- none	27-30	Total number of rows or the total number of individual sets of rows in a section. If there are no data applicable to a section, enter the word 'none'. Valid Set of Rows: 101.0 to 150.0 Format: Left justified and space filled. Do not use quotation marks.
6	End of Record Code	"XQ"	32-35	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: All fields are separated by commas.

The ruler lines (123456789 etc.) included below and following with sample records are included only to assist the reader. Do not include ruler lines as records in the electronic filing.

```
        1         2         3     . . . . .    Ruler line
12345678901234567890123456789012345 . . . . .    Ruler line
Sample record:
1443,"LBIL","B10 ", 100.0,2   ,"XQ"

         - OR -

1443,"LBIL","B10 ", 100.0,none,"XQ"
```

RECORD TYPE B10 - ACCOUNTS PAYABLE TO AFFILIATES DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1444	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: Include quotation marks.
3	Record Type	"B10"	13-18	Always contains the letter B capitalized and the number 10 with no space between them. Format: Include quotation marks.
4	Row Number	101.0	20-25	Row number as identified on pages 34 and 101 of the accompanying Report Definition. Valid ranges: 101.0 to 160.0 Include only those rows for which there are data to report. Format: Right justified and space filled, with one decimal place. Since all applicable numbers are integers, append .0 to the row number.
5	Column (b) data	"Winsconsin Bell" -or- "N/A " (spaces until pos. 68)	27-68	This field contains the data corresponding to column (b) as shown in the Forms Section of the accompanying Report Definition. Do NOT override designated N/As. Format: Left justified and space filled. Include quotation marks.
6	Column (c) data	53456	70-78	This field contains the data corresponding to column (c) as shown on Forms Section of the accompanying Report Definition. Format: Right justified and space filled. Enter -99999 in integer rows where a field is designated by N/A. All other fields must be populated. If there are no data applicable to an open field enter zero. Enter -88888 in integer rows on the "public version" diskette to indicate that confidential treatment has been requested.
7	Column (d) data	468	80-88	Column (d) data Format: See Field 6 above.
8	Column (e) data	1256	90-98	Column (e) data Format: See Field 6 above.
9	Column (f) data	54253	100-108	Column (f) data Format: See Field 6 above.

RECORD TYPE B10 - ACCOUNTS PAYABLE TO AFFILIATES DATA RECORD(continued)

Field	Item	Example	Position	Description
10	End of Record Code	"XQ"	110-113	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: Separate all fields with commas.

Footnote records are needed if any data for the current period differ materially from those for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition. Add one or more Type F3 record(s) (after the remaining Type C3 record) containing footnote text to explain the specific circumstances.

```
         1         2         3         4         5         6         7         8         9
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789
Sample records:
1443,"LBIL","B10 ", 100.0,2    ,"XQ"
1444,"LBIL","B10 ", 101.0,"Wisconsin Bell                                ",   53456,     468,     1256,
1445,"LBIL","B10 ", 102.0,"Ameritech Audiotex Services, Inc.             ",   14367,      90,        0,
1446,"LBIL","B10 ", 160.0,"N/A                                           ",   67823,     558,     1256,

1         1
0         1
01234567890123
Continuation of sample records:
    54253,"XQ"
    14286,"XQ"
    68521,"XQ"
```

RECORD TYPE B11 - SECTION RECORD

Field	Item	Example	Position	Description
1	Record Number	1447	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. (See attached COSA Code Table) Format: Include quotation marks.
3	Record Type	"B11a"	13-18	Always contains the letter B capitalized and the number 11 with no space between them. Format: Include quotation marks.
4	Section ID Row Number	100.0	20-25	Section row number to identify sections of a table that requires reporting multiple rows of data for a particular item in Record Type B11. Valid IDs: 100.0, 200.0, 300.0, 400.0
5	Section Item Count	2 -or- none	27-30	Total number of rows or the total number of individual sets of rows in a section. If there are no data applicable to a section, enter the word 'none'. Valid Set of Rows: 101.0 to 185.0, 201.0 to 289.0, 301.0 to 308.0, 401.0 to 408.0 Format: Left justified and space filled. Do not use quotation marks.
6	End of Record Code	"XQ"	32-35	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: All fields are separated by commas.

The ruler lines (123456789 etc.) included below and following with sample records are included only to assist the reader. Do not include ruler lines as records in the electronic filing.

```
        1         2         3    . . . . .    Ruler line
12345678901234567890123456789012345 . . . . .    Ruler line
Sample record:
1447,"LBIL","B11a", 100.0,2   ,"XQ"

         - OR -

1447,"LBIL","B11a", 100.0,none,"XQ"
```

RECORD TYPE B11-LONG-TERM DEBT DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1448	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: Include quotation marks.
3	Record Type	"B11a"	13-18	Always contains the letter B capitalized and the number 11 with no space between them. Format: Include quotation marks.
4	Row Number	101.0	20-25	Row number as identified on pages 35 and 102-103 of the accompanying Report Definition. Valid ranges: 101.0 to 500.0. Include only those rows for which there are data to report. Format: Right justified and space filled, with one decimal place. Since all applicable row numbers are integers, append .0 to each row number
5	Column (b) data	"Series C, 3-1/4%" -or- "N/A " (spaces until pos. 50)	27-50	This field contains the data corresponding to column (b) as shown in the Forms Section of the accompanying Report Definition. Do NOT override designated N/A's. Format: Left justified and space filled. Include quotation marks.
6	Column (c) data	"04011952"	52-61	This field contains the data corresponding to column (c) as shown in the Forms Section of the accompanying Report Definition. Do NOT override designated N/A's. Format: "mmddyyyy" Enter "00000000" in the field if designated by N/A. Include quotation marks.
7	Column (d) data	"04011995"	63-72	Column (d) data Format: See Field 6 above.
8	Column (e) data	3000	74-82	This field contains the data corresponding to column (e) as shown in the Forms Section of the accompanying Report Definition. Do NOT override designated N/As. Format: Right justified and space filled Enter -99999 in integer rows and -99999.00 in decimal rows where a field is designated by N/A. All other fields must be populated. If there are no data applicable to an open field enter zero. Enter -88888 in integer rows and -88888.00 in percentage rows on the "public version" diskette to indicate that confidential treatment has been requested.
9	Column (f) data	-234	84-92	Column (f) data Format: See Field 8 above.
10	Column (g) data	0	94-102	Column (g) data Format: See Field 8 above.
11	Column (h) data	3.25	104-112	This field contains data corresponding to column (h) as shown in the Forms Section of the accompanying Report Definition. Format: Enter as a percent and round to two decimal places. See Field 8 format above if field designated by N/A.

RECORD TYPE B11-LONG-TERM DEBT DATA RECORD(continued)

Field	Item	Example	Position	Description
12	Column (i) data	4.25	114-122	Column (i) data Format: See Field 11 above.
13	End of Record Code	"XQ"	124-127	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: Separate all fields with commas.

Footnote records are needed if any data for the current period differ materially from those for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition. Add one or more Type F3 record(s) (after the remaining Type C3 record) containing footnote text to explain the specific circumstances.

```
         1         2         3         4         5         6         7         8         9         1
                                                                                                   0
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123
Sample records:
1447,"LBIL","B11a", 100.0,2    ,"XQ"
1448,"LBIL","B11a", 101.0,"Series C, 3-1/4%      ","04011952","04011995",    3000,    -234,       0,
1449,"LBIL","B11a", 102.0,"Series D, 3-1/4%      ","07151955","07151995",     455,    -156,       0,
1450,"LBIL","B11a", 190.0,"N/A                   ","00000000","00000000",    3455,    -390,       0,
1451,"LBIL","B11b", 200.0,none,"XQ"
1452,"LBIL","B11c", 300.0,1    ,"XQ"
1453,"LBIL","B11c", 301.0,"Series I, 6%          ","06011969","06011905",    1000,     234,     125,
1454,"LBIL","B11c", 310.0,"N/A                   ","00000000","00000000",    1000,     234,     125,
1455,"LBIL","B11d", 400.0,1    ,"XQ"
1456,"LBIL","B11d", 401.0,"Series K, 7-5/8%      ","12101973","12101904",    5000,    1234,     725,
1457,"LBIL","B11d", 410.0,"N/A                   ","00000000","00000000",    5000,    1234,     725,
1458,"LBIL","B11 ", 500.0,"N/A                   ","00000000","00000000",    9455,    1468,     850,


1     1       1
0     1       2
4567890123456789012334 67
Continuation of sample records:
     3.25,     4.25,"XQ"
     3.23,     3.50,"XQ"
-99999.00,-99999.00,"XQ"

     6.23,     6.50,"XQ"
-99999.00,-99999.00,"XQ"

     7.23,     8.50,"XQ"
-99999.00,-99999.00,"XQ"
-99999.00,-99999.00,"XQ"
```

RECORD TYPE B12 - NET DEFERRED INCOME TAXES DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1459	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: Include quotation marks.
3	Record Type	"B12 "	13-18	Always contains the letter B capitalized and the number 12 with no space between them. Format: Include quotation marks.
4	Row Number	100.0	20-25	Row number as identified on pages 36-38 and 104-108 the accompanying Report Definition. Valid ranges: 100.0 to 450.0 Format: Right justified and space filled. with one decimal place. Since all applicable numbers are integers, append .0 to the row number.
5	Column (b) data	21728	27-35	This field contains the data corresponding to column (b) as shown in the Forms Section of the accompanying Report Definition. Format: Right justified and space filled. Enter -99999 in all rows where a field is designated by N/A. All other Fields must be populated. If there are no data applicable to an open field enter zero. Enter -88888 in rows on the "public version" diskette to indicate that confidential treatment has been requested.
6	Column (d) data	1234	37-45	Column (d) data Format: See Field 5 above.
7	Column (e) data	2345	47-55	Column (e) data Format: See Field 5 above.
8	Column (f) data	1234	57-65	Column (f) data Format: See Field 5 above.
9	Column (g) data	1234	67-75	Column (g) data Format: See Field 5 above.
10	Column (h) data	15678	77-85	Column (h) data Format: See Field 5 above.
11	End of Record Code	"XQ"	87-90	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: Separate all fields with commas.

Footnote records are needed if any data for the current period differ materially from those for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition. Add one or more Type F3 record(s) (after the remaining Type C3 record) containing footnote text to explain the specific circumstances.

```
         1         2         3         4         5         6         7         8         9
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789
Sample records:
1459,"LBIL","B12 ", 100.0,    21728,    1234,    2345,    1234,    1234,    15678,"XQ"
```

RECORD TYPE B13 - SECTION ID RECORD

Field	Item	Example	Position	Description
1	Record Number	1495	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. (See attached COSA Code Table) Format: Include quotation marks.
3	Record Type	"B13"	13-18	Always contains the letter B capitalized and the number 13 with no space between them. Format: Include quotation marks.
4	Section ID Row Number	100.0	20-25	Section row number to identify sections of a table that requires reporting multiple rows of data for a particular item in Record Type B13. Valid ID: 100.0
5	Section Item Count	2 -or- none	27-30	Total number of rows or the total number of individual sets of rows in a section. If there are no data applicable to a section, enter the word 'none'. Valid Set of Rows: 101.0 to 140.0 Format: Left justified and space filled. Do not use quotation marks
6	End of Record Code	"XQ"	32-35	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: All fields are separated by commas.

The ruler lines (123456789 etc.) included below and following with sample records are included only to assist the reader. Do not include ruler lines as records in the electronic filing.

```
        1         2         3     . . . . .    Ruler line
12345678901234567890123456789012345 . . . . .    Ruler line
Sample record:
1495,"LBIL","B13 ", 100.0,2    ,"XQ"

          - OR -

1495,"LBIL","B13 ", 100.0,none,"XQ"
```

RECORD TYPE B13 - OTHER DEFERRED CREDITS DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1496	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: Include quotation marks.
3	Record Type	"B13"	13-18	Always contains the letter B capitalized and the number 13 with no space between them. Format: Include quotation marks.
4	Row Number	101.0	20-25	Row number as identified on pages 39 and 109 of the accompanying Report Definition. Valid ranges: 101.0 to 150.0 Include only those rows for which there are data to report. Format: Right justified and space filled, with one decimal place. Since all applicable numbers are integers, append .0 to the row number.
5	Column (b) data	"Sale of Salvage " -or- "N/A " (spaces until pos. 83)	27-83	This field contains the data corresponding to column (b) as shown in the Forms Section of the accompanying Report Definition. Do NOT override designated N/As. Format: Left justified and space filled. Include quotation marks.
6	Column (c) data	13456	85-93	This field contains the data corresponding to column (c) as shown on Forms Section of the accompanying Report Definition. Format: Right justified and space filled. Enter -99999 in integer rows where a field is designated by N/A. All other fields must be populated. If there are no data applicable to an open field enter zero. Enter -88888 in integer rows on the "public version" diskette to indicate that confidential treatment has been requested.
7	End of Record Code	"XQ"	95-98	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: Separate all fields with commas.

Footnote records are needed if any data for the current period differ materially from those for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition. Add one or more Type F3 record(s) (after the remaining Type C3 record) containing footnote text to explain the specific circumstances.

```
        1         2         3         4         5         6         7         8         9
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678
Sample records:
1495,"LBIL","B13 ", 100.0,2    ,"XQ"
1496,"LBIL","B13 ", 101.0,"Sale of Salvage Scrap Material                          ",    13456,"XQ"
1497,"LBIL","B13 ", 102.0,"Accrual for Intelligent Network Release Platform        ",     2367,"XQ"
1498,"LBIL","B13 ", 150.0,"N/A                                                     ",    15823,"XQ"
```

RECORD TYPE B14 - SECTION ID RECORD

Field	Item	Example	Position	Description
1	Record Number	1499	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. (See attached COSA Code Table) Format: Include quotation marks.
3	Record Type	"B14"	13-18	Always contains the letter B capitalized and the number 14 with no space between them. Format: Include quotation marks.
4	Section ID Row Number	100.0	20-25	Section row number to identify sections of a table that requires reporting multiple rows of data for a particular item in Record Type B14. Valid ID: 100.0
5	Section Item Count	2 -or- none	27-30	Total number of rows or the total number of individual sets of rows in a section. If there are no data applicable to a section, enter the word 'none'. Valid Set of Rows: 110.0 to 130.0 Format: Left justified and space filled. Do not use quotation marks.
6	End of Record Code	"XQ"	32-35	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: All fields are separated by commas.

The ruler lines (123456789 etc.) included below and following with sample records are included only to assist the reader. Do not include ruler lines as records in the electronic filing.

```
        1         2         3     . . . . .    Ruler line
12345678901234567890123456789012345 . . . . .    Ruler line
Sample record:
1499,"LBIL","B14 ", 100.0,2   ,"XQ"

          - OR -

1499,"LBIL","B14 ", 100.0,none,"XQ"
```

RECORD TYPE B14 - CAPITAL STOCK DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1500	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: Include quotation marks.
3	Record Type	"B14"	13-18	Always contains the letter B capitalized and the number 14 with no space between them. Format: Include quotation marks.
4	Row Number	101.0	20-25	Row number as identified on pages 40 and 110 of the accompanying Report Definition. Valid ranges: 101.0 to 140.0 Format: Right justified and space filled, with one decimal place. Since all applicable numbers are integers, append .0 to the row number.
5	Column (b) data	"Common Stock " -or- "N/A " (spaces until pos. 51)	27-51	This field contains the data corresponding to column (b) as shown in the Forms Section of the accompanying Report Definition. Do NOT override designated N/As. Format: Left justified and space filled. Include quotation marks.
6	Column (c) data	"YES" -or- "NO " (spaces until pos. 57)	53-57	This field contains the data corresponding to column (c) as shown in the Forms Section of the accompanying Report Definition. Do NOT override designated N/As. Valid entry: "YES", "NO " or "N/A" Format: Left justified and space filled. Capitalize and Include quotation marks.
7	Column (d) data	20	59-67	This field contains the data corresponding to column (d) as shown in the Forms Section of the accompanying Report Definition. Format: Right justified and space filled. Enter -99999 in integer rows where a field is designated by N/A. All other fields must be populated. If there are no data applicable to an open field enter zero. Enter -88888 in integer rows on the "public version" diskette to indicate that confidential treatment has been requested.
8	Column (e) data	100	69-77	Column (e) data Format: See Field 7 above.
9	Column (f) data	163	79-87	Column (f) data Format: See Field 7 above.
10	Column (g) data	259	89-97	Column (g) data Format: See Field 7 above.
11	Column (h) data	422	99-107	Column (h) data Format: See Field 7 above.
12	Column (i) data	0	109-117	Column (i) data Format: See Field 7 above.

RECORD TYPE B14 - CAPITAL STOCK DATA RECORD(continued)

Field	Item	Example	Position	Description
13	Column (j) data	0	119-127	Column (j) data Format: See Field 7 above.
14	End of Record Code	"XQ"	129-132	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: Separate all fields with commas.

Footnote records are needed if any data for the current period differ materially from those for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition. Add one or more Type F3 record(s) (after the remaining Type C3 record) containing footnote text to explain the specific circumstances.

```
        1         2         3         4         5         6         7         8         9
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678
Sample records:
1499,"LBIL","B14 ", 100.0,2   ,"XQ"
1500,"LBIL","B14 ", 101.0,"Common Stock          ","YES",      20,      100,      163,      259,
1501,"LBIL","B14 ", 102.0,"Preferred Stock       ","NO ",     100,      390,        0,     1234,
1502,"LBIL","B14 ", 140.0,"N/A                   ","N/A",  -99999,   -99999,      163,     1493,

 1         1         1         1
 0         1         2         3
90123456789012345678901234567890123
Continuation of sample records:
      422,        0,        0,"XQ"
     1234,      123,      390,"XQ"
     1656,   -99999,      390,"XQ"
```

RECORD TYPE B15 - SECTION ID RECORD

Field	Item	Example	Position	Description
1	Record Number	1503	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. (See attached COSA Code Table) Format: Include quotation marks.
3	Record Type	"B15a"	13-18	Always contains the letter B capitalized and the number 15 with no space between them. Format: Include quotation marks.
4	Section ID Row Number	100.0	20-25	Section row number to identify sections of a table that requires reporting multiple rows of data for a particular item in Record Type B15. Valid IDs: 100.0, 120.0, 200.0, 220.0
5	Section Item Count	2 -or- none	27-30	Total number of rows or the total number of individual sets of rows in a section. If there are no data applicable to a section, enter the word 'none'. Valid Set of Rows: 101.0 to 110.0, 121.0 to 130.0, 201.0 to 210.0, 221.0 to 299.0 Format: Left justified and space filled. Do not use quotation marks.
6	End of Record Code	"XQ"	32-35	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: All fields are separated by commas.

The ruler lines (123456789 etc.) included below and following with sample records are included only to assist the reader. Do not include ruler lines as records in the electronic filing.

```
        1         2         3     . . . . .     Ruler line
12345678901234567890123456789012345 . . . . .     Ruler line
Sample record:
1503,"LBIL","B15a", 100.0,2   ,"XQ"

         - OR -

1503,"LBIL","B15a", 100.0,none,"XQ"
```

RECORD TYPE B15 - CAPITAL STOCK AND FUNDED DEBT REACQUIRED OR RETIRED DURING THE YEAR DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1504	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: Include quotation marks.
3	Record Type	"B15a"	13-18	Always contains the letter B capitalized and the number 15 with no space between them. Format: Include quotation marks.
4	Row Number	101.0	20-25	Row number as identified on pages 41-42 and 112 of the accompanying Report Definition. Valid ranges: 101.0 to 299.0. Include only those rows for which there are data to report. Format: Right justified and space filled. with one decimal place. Since all applicable row numbers are integers, append .0 to each row number
5	Column (b) data	"35-Year Debenture, 4.375%, due 12/1/91" (spaces until pos. 67)	27-68	This field contains the data corresponding to column (b) as shown in the Forms Section of the accompanying Report Definition. Format: Left justified and space filled. Include quotation marks.
6	Column (c) data	400	70-78	This field contains the data corresponding to column (c) as shown in the Forms Section of the accompanying Report Definition. Do NOT override designated N/As. Format: Right justified and space filled Enter -99999 in integer rows where a field is designated by N/A. All other fields must be populated. If there are no data applicable to an open field enter zero. Enter -88888 in integer rows on the "public version" diskette to indicate that confidential treatment has been requested.
7	Column (d) data	100	80-88	Column (d) data Format: See Field 6 above.
8	Column (e) data	200	90-98	Column (e) data Format: See Field 6 above.
9	Column (f) data	50	100-108	Column (f) data Format: See Field 6 above.
10	Column (g) data	5000	110-118	Column (g) data Format: See Field 6 above.
11	Column (h) data	0	120-128	Column (h) data Format: See Field 6 above.
12	Column (i) data	"00000000"	130-139	This field contains the data corresponding to column (i) as shown on the accompanying Report Definition. Format: "mmddyyyy" Include quotation marks.

RECORD TYPE B15 - CAPITAL STOCK AND FUNDED DEBT REACQUIRED OR RETIRED DURING THE YEAR DATA RECORD(continued)

Field	Item	Example	Position	Description
13	Column (j) data	2045.00	141-147	This field contains the data corresponding to column (j) as shown in the Forms Section of the accompanying Report Definition. Format: ####.## Enter an account number using two decimal places. Do not Include quotation marks.
14	Column (k) data	150	149-157	Column (k) data Format: See Field 6 above.
15	Column (l) data	0000.00	159-165	Column (l) data Format: See Field 13 above.
16	Column (m) data	0	167-175	Column (m) data Format: See Field 6 above.
17	Column (n) data	1035.00	177-183	Column (n) data Format: See Field 13 above.
18	Column (o) data	130	185-193	Column (o) data Format: See Field 6 above.
19	End of Record Code	"XQ"	195-198	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: Separate all fields with commas.

Footnote records are needed if any data for the current period differ materially from those for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition. Add one or more Type F3 record(s) (after the remaining Type C3 record) containing footnote text to explain the specific circumstances.

```
         1         2         3         4         5         6         7         8         9         1
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789
Sample records:
1503,"LBIL","B15a", 100.0,2    ,"XQ"
1504,"LBIL","B15a", 101.0,"35-Year Debenture, 4.207%, due 12/3/91  ",     400,     100,     200,      50,
1505,"LBIL","B15a", 102.0,"Medium Term Note, 9.35%, due 07/1/91    ",       0,       0,       0,       0,
1506,"LBIL","B15b", 120.0,none,"XQ"
1507,"LBIL","B15c", 200.0,1    ,"XQ"
1508,"LBIL","B15c", 201.0,"30-Year Debenture, 3.507%, due 11/30/92 ",     100,     200,     300,     100,
1509,"LBIL","B15d", 220.0,none,"XQ"


1         1         1         1         1         1         1         1         1
1         2         3         4         5         6         7         8         9
01234567890123456789012345678901234567890123456789012345678901234567890123456789012345678
Continuation of sample records:
     5000,       0,"00000000",2045.00,      150,0000.00,        0,1035.00,      130,"XQ"
        0,       0,"01121992",0000.00,        0,0000.00,      345,0000.00,        0,"XQ"


     1000,      16,"00000000",1067.00,      300,0000.00,        0,0000.00,        0,"XQ"
```

SAMPLE RECORD LAYOUT FOR FILE "LBIL94US.UI1"

The ruler lines included in this sample file are included only to assist the reader. Do not include ruler lines as lines in the automated report. See attached record layouts for a detailed description of each record type.

```
                                                
```

SAMPLE RECORD LAYOUT FOR FILE "LBIL94US.UI1"(cont'd)

```
                                                
```

RECORD TYPE H1 - HEADER RECORD

Field	Item	Example	Position	Description
1	Record Number	1001	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. (See attached COSA Code Table) Format: Include quotation marks.
3	Record Type	"H1 "	13-18	Always contains the letter H capitalized and the number 1 with no space between them. Format: Include quotation marks.
4	File Name	"LBIL94US.UI1"	20-33	The name of the ASCII file. Format: See page 1, paragraph B.4 above. Include quotation marks.
5	Year	1994	35-38	The year covered by the data.
6	Quarter #	0	40	Always contains the number 0 since this is an annual data file.
7	Data Entry Date	19950315	42-49	The date on which the data were last entered or revised. Format: YYYYMMDD.
8	Version	"U"	51-53	The version letter (P, C or U) capitalized (for Public, Confidential or Unrestricted) Format: Include quotation marks.
9	Submission #	1	55-56	0 for test data purposes only. 1 for first submission of a year's data. Higher numbers (2, 3, etc.) are used if needed for successive revisions to correct that year's submission. Format: Right justified and space filled.
10	End of Record Code	"XQ"	58-61	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: All fields are separated by commas.

The ruler lines (123456789 etc.) included below and following with sample records are included only to assist the reader. Do not include ruler lines as records in the electronic filing.

```
        1         2         3         4         5         6  . . . . .   Ruler line
123456789012345678901234567890123456789012345678901234567890123456789012  . . . . .   Ruler line
Sample record:
1001,"LBIL","H1  ","LBIL94US.UI1",1994,0,19950315,"U", 1,"XQ"
```

RECORD TYPE L1 - LABEL RECORD

Field	Item	Example	Position	Description
1	Record Number	1002	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: Include quotation marks.
3	Record Type	"L1 "	13-18	Always contains the letter L capitalized and the number 1 with no space between them. Format: Include quotation marks.
4	Report Number	"FCC REPORT 43-02"	20-37	Always contains "FCC REPORT 43-02" capitalized. Format: Include quotation marks.
5	Carrier	"Illinois Bell " (spaces until pos. 68)	39-70	Name of the carrier. Format: Left justified and space filled. Include quotation marks.
6	Study Area	" "	72-93	Name of the study area. Usually blank, since this is an operating company level report. Format: Left justified and space filled. Include quotation marks.
7	Period Covered	"Jan 1994 to Dec 1994"	95-116	Period covered by the data. Format: "mmm yyyy to mmm yyyy" Include quotation marks.
8	End of Record Code	"XQ"	118-121	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: All fields are separated by commas.

```
         1         2         3         4         5         6         7         8         9         0         1         1         1
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901
Sample record:
1002,"LBIL","L1 ","FCC REPORT 43-02","Illinois Bell                ","                ","Jan 1994 to Dec 1994","XQ"
```

RECORD TYPE I2 - SECTION ID RECORD

Field	Item	Example	Position	Description
1	Record Number	1003	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. (See attached COSA Code Table) Format: Include quotation marks.
3	Record Type	"I2a "	13-18	Always contains the letter I capitalized and the number 2 with no space between them. Format: Include quotation marks.
4	Section ID Row Number	100.0	20-25	Section row number to identify sections of a table that requires reporting multiple rows of data for a particular item in Record Type I2. Valid IDs: 100.0, 200.0
5	Section Item Count	2 -or- none	27-30	Total number of rows or the total number of individual sets of rows in a section. If there are no data applicable to a section, enter the word 'none'. Valid Set of Rows: 101.0 to 139.0, 201.0 to 239.0 Format: Left justified and space filled. Do not use quotation marks.
6	End of Record Code	"XQ"	32-35	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: All fields are separated by commas.

The ruler lines (123456789 etc.) included below and following with sample records are included only to assist the reader. Do not include ruler lines as records in the electronic filing.

```
        1         2         3     . . . . .    Ruler line
12345678901234567890123456789012345 . . . . .    Ruler line
Sample record:
1003,"LBIL","I2a ", 100.0,2   ,"XQ"

          - OR -

1003,"LBIL","I2a ", 100.0,none,"XQ"
```

RECORD TYPE 12- ANALYSIS OF SERVICES PURCHASED FROM OR SOLD TO AFFILIATES DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1004	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: Include quotation marks.
3	Record Type	"I2a "	13-18	Always contains the letter I capitalized and the number 2 with no space between them. Format: Include quotation marks.
4	Row Number	101.0	20-25	Row number as identified on pages 49 and 120 of accompanying Report Definition. Valid ranges: 101.0 to 240.0 Include only those rows for which there are data to report. Format: Right justified and space filled, with one decimal place. Since all applicable numbers are integers, append .0 to the row number.
5	Column (b) data	"Ameritech Services, Inc." -or- "N/A " (spaces until pos. 68)	27-68	This field contains the data corresponding to column (b) as shown in the Forms Section of the accompanying Report Definition. Do NOT override designated N/As. Format: Left justified and space filled.. Include quotation marks.
6	Column (c) data	2716	70-78	This field contains the data corresponding to column (c) as shown in the Forms Section of the accompanying Report Definition. Do NOT override designated N/As. Format: Right justified and space filled. Enter -99999 in integer rows where a field is designated by N/A. All other fields must be populated. If there are no data applicable to an open field enter zero. Enter -88888 in integer rows on the "public version" diskette to indicate that confidential treatment has been requested.
7	Column (d) data	5432	80-88	Column (d) data Format: See Field 6 above.
8	Column (e) data	2716	90-98	Column (e) data Format: See Field 6 above.

RECORD TYPE I2- ANALYSIS OF SERVICES PURCHASED FROM OR SOLD TO AFFILIATES DATA RECORD(continued)

Field	Item	Example	Position	Description
9	Column (f) data	60000	100-108	Column (f) data Format: See Field 6 above.
10	End of Record Code	"XQ"	110-113	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: Separate all fields with commas.

Footnote records are needed if any data for the current period differ materially from those for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition. Add one or more Type F3 record(s) (after the remaining Type C3 records) containing footnote text to explain the specific circumstances.

```
         1         2         3         4         5         6         7         8         9         0         1
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123
Sample records:
1003,"LBIL","I2a ", 100.0,2    ,"XQ"
1004,"LBIL","I2a ", 101.0,"Ameritech Service, Inc.                ",    2716,    5432,    2716,   10864,"XQ"
1005,"LBIL","I2a ", 102.0,"Illinois Bell Communications, Inc.     ",     123,       0,     456,    7890,"XQ"
1006,"LBIL","I2a ", 140.0,"N/A                                   ",    2839,    5432,    3172,   18754,"XQ"
1007,"LBIL","I2b ", 200.0,none,"XQ"
```

RECORD TYPE I3 - PENSION COST DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1008	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled..
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: Include quotation marks.
3	Record Type	"I3 "	13-18	Always contains the letter I capitalized and the number 3 with no space between them. Format: Include quotation marks.
4	Row Number	100.0	20-25	Row number as identified on pages 50-53 and 122-128 of the accompanying Report Definition. Valid ranges: 100.0 to 410.0 Format: Right justified and space filled., with one decimal place. Since all applicable row numbers are integers append .0 to the row number.
5	Column (b) data	21728 -OR- 12.00	27-35	This field contains the data corresponding to column (b) as shown in the Forms Section of the accompanying Report Definition. Format: Right justified and space filled. Enter -99999 in integer rows and -99999.00 in percentage rows where a field is designated by N/A. All other Fields must be populated. If there are no data applicable to an open field enter zero. Enter -88888 in integer rows and -88888.00 in percentage rows on the "public version" diskette to indicate that confidential treatment has been requested.
6	Column (c) data	12716	37-45	Column (c) data Format: See Field 5 above.
7	End of Record Code	"XQ"	47-50	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: Separate all fields with commas.

Footnote records are needed if any data for the current period differ materially from that for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition. Add one or more Type F3 record(s) (after the remaining Type C3 records) containing footnote text to explain the specific circumstances.

```
         1         2         3         4         5
12345678901234567890123456789012345678901234567890
Sample record:
1008,"LBIL","I3 ", 100.0,    21728,    12716,"XQ"
```

RECORD TYPE I4 - OPERATING OTHER TAXES (ACCOUNT 7240) DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1097	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled..
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: Include quotation marks.
3	Record Type	"I4 "	13-18	Always contains the letter I capitalized and the number 4 with no space between them. Format: Include quotation marks.
4	Row Number	240.0	20-25	Row number as identified in the State Row Numbers and Codes Reference Table of the accompanying Report Definition. Valid ranges: 100.0 to 940.0 Include only those rows for which there are data to report. Format: Right justified and space filled., with one decimal place. Since all applicable row numbers are integers append .0 to the row number.
5	Column (b) data	"IL" -or- "NA"	27-30	This field contains the state code corresponding to column (b) as shown on page 54 and 129 of the accompanying Report Definition. See Reference Table for list of state codes. Format: Left justified and space filled.. Include quotation marks.
6	Column (c) data	24035	32-40	This field contains the data corresponding to column (c) as shown in the Forms Section of the accompanying Report Definition. Format: Right justified and space filled.. Enter -99999 in integer rows where a field is designated by N/A. All other fields must be populated. If there are no data applicable to an open field enter zero. Enter -88888 in integer rows on the "public version" diskette to indicate that confidential treatment has been requested.
7	Column (d) data	10567	42-50	Column (d) data Format: See Field 6 above.
8	Column (e) data	3478	52-60	Column (e) data Format: See Field 6 above.
9	Column (f) data	0	62-70	Column (f) data Format: See Field 6 above.
10	Column (g) data	0	72-80	Column (g) data Format: See Field 6 above.
11	Column (h) data	38080	82-90	Column (h) data Format: See Field 6 above.
12	End of Record Code	"XQ"	92-95	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

RECORD TYPE 14 - OPERATING OTHER TAXES (ACCOUNT 7240) DATA RECORD(continued)

Note: Separate all fields with commas.

Footnote records are needed if any data for the current period differ materially from those for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition. Add one or more Type F3 record(s) (after the remaining Type C3 records) containing footnote text to explain the specific circumstances.

```
      1         2         3         4         5         6         7         8         9
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345
Sample records:
1096,"LBIL","I4  ",  100.0,"NA",    23456,    5076,       0,    5678,       0,   34210,"XQ"
1097,"LBIL","I4  ",  240.0,"IL",    24035,   10567,    3478,       0,       0,   38080,"XQ"
1098,"LBIL","I4  ",  250.0,"IN",     1234,    6780,     245,   34560,    3456,   46275,"XQ"
1099,"LBIL","I4  ",  910.0,"TO",    25269,   17347,    3723,   34560,    3456,   84355,"XQ"
1100,"LBIL","I4  ",  920.0,"NA",     4732,       0,       0,       0,       0,    4732,"XQ"
1101,"LBIL","I4  ",  930.0,"NA",        0,       0,       0,       0,       0,       0,"XQ"
1102,"LBIL","I4  ",  940.0,"NA",    43993,   22423,    3723,   40238,    3456,  113833,"XQ"

                                    - OR -
      (if there are no states or jurisdictions to report on rows 110 through 810)

1096,"LBIL","I4  ",  100.0,"NA",    23456,    5076,       0,    5678,       0,   34210,"XQ"
1097,"LBIL","I4  ",  920.0,"NA",     4732,       0,       0,       0,       0,    4732,"XQ"
1098,"LBIL","I4  ",  930.0,"NA",        0,       0,       0,       0,       0,       0,"XQ"
1099,"LBIL","I4  ",  940.0,"NA",    18724,    5076,       0,    5678,       0,   29478,"XQ"
```

RECORD TYPE 15 - SECTION ID RECORD

Field	Item	Example	Position	Description
1	Record Number	1103	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled..
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. (See attached COSA Code Table) Format: Include quotation marks.
3	Record Type	"I5a "	13-18	Always contains the letter I capitalized and the number 5 with no space between them. Format: Include quotation marks.
4	Section ID Row Number	109.0	20-25	Section row number to identify sections of a table that requires reporting multiple rows of data for a particular item in Record Type I5. Valid IDs: 109.0, 119.0, 129.0, 139.0, 149.0, 159.0, 169.0, 179.0, 189.0
5	Section Item Count	5 -or- none	27-30	Total number of rows or the total number of individual sets of rows in a section. If there are no data applicable to a section, enter the word 'none'. Valid Set of Rows: 110.0 to 115.0, 120.0 to 125.0, 130.0 to 135.0, 140.0 to 145.0, 150.0 to 155.0, 160.0 to 165.0, 170.0 to 175.0, 180.0 to 185.0, 190.0 to 195.0 Format: Left justified and space filled.. Do not use quotation marks.
6	End of Record Code	"XQ"	32-35	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: All fields are separated by commas.

The ruler lines (123456789 etc.) included below and following with sample records are included only to assist the reader. Do not include ruler lines as records in the electronic filing.

```
         1         2         3     . . . . .    Ruler line
12345678901234567890123456789012345 . . . . .  Ruler line
Sample record:
1103,"LBIL","I5a ", 109.0,5   ,"XQ"

          - OR -

1103,"LBIL","I5a ", 109.0,none,"XQ"
```

RECORD TYPE I5 - PREPAID TAXES AND TAX ACCRUALS DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1104	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled..
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: Include quotation marks.
3	Record Type	"I5a "	13-18	Always contains the letter I capitalized and the number 5 with no space between them. Format: Include quotation marks.
4	Row Number	110.0	20-25	Row number as identified on pages 55-60 and 131 of the accompanying Report Definition. Valid ranges: 110.0 to 200.0 Include only those rows for which there are data to report. Format: Right justified and space filled, with one decimal place. Since all applicable row numbers are integers append .0 to the row number.
5	Column (b) data	"1992 " (spaces until pos. 37)	27-37	This field contains data corresponding to column (b) as shown in the Forms Section of the accompanying Report Definition. Format: "yyyy-yyyy" Left justified and space filled. Enter "N/A" in field if designated by N/A. Include quotation marks.
6	Column (c) data	0	39-47	This field contains the data corresponding to column (c) as shown in the Forms Section of the accompanying Report Definition. Format: Right justified and space filled. Enter -99999 in integer rows where a field is designated by N/A. All other fields must be populated. If there are no data applicable to an open field enter zero. Enter -88888 in integer rows on the "public version" diskette to indicate that confidential treatment has been requested.
7	Column (d) data	-99999	49-57	Column (d) data Format: See Field 6 above.
8	Column (e) data	27345	59-67	Column (e) data Format: See Field 6 above.
9	Column (f) data	7240.00	69-75	This field contains the data corresponding to column (f) as shown in the Forms Section of the accompanying Report Definition. Format: #####.## Enter an account number using two decimal places. Enter -33333 to indicate that there was more than one account charged to taxes accrued and footnote each account. Enter -99999 if field is designation by N/A. Do not Include quotation marks.
10	Column (g) data	1234	77-85	Column (g) data Format: See Field 6 above.
11	Column (h) data	26601	87-95	Column (h) data Format: See Field 6 above.
12	Column (i) data	0	97-105	Column (i) data Format: See Field 6 above.

RECORD TYPE I5 - PREPAID TAXES AND TAX ACCRUALS DATA RECORD(continued)

Field	Item	Example	Position	Description
13	Column (j) data	0	107-115	Column (j) data Format: See Field 6 above.
14	Column (k) data	0	117-125	Column (k) data Format: See Field 6 above.
15	Column (l) data	-99999	127-135	Column (l) data Format: See Field 6 above.
16	Column (m) data	1908	137-145	Column (m) data Format: See Field 6 above.
17	End of Record Code	"XQ"	147-150	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: Separate all fields with commas.

Footnote records are needed if any data for the current period differ materially from those for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition. Add one or more Type F3 record(s) (after the remaining Type C3 records) containing footnote text to explain the specific circumstances.

```
         1         2         3         4         5         6         7         8         9
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456
Sample records:
1103,"LBIL","I5a ", 109.0,5    ,"XQ"
1104,"LBIL","I5a ", 110.0,"1992      ",      0,   -99999,    27345,7240.00,    1234,    26601,
1105,"LBIL","I5a ", 111.0,"1991      ",  12345,   -99999,        0,7440.00,    2100,      345,
1106,"LBIL","I5a ", 112.0,"1990      ",  20000,   -99999,        0, -33333,       0,      100,
1107,"LBIL","I5a ", 113.0,"1989      ",      0,   -99999,     5000,7240.00,       0,      500,
1108,"LBIL","I5a ", 114.0,"1988      ",      0,   -99999,     1500,7240.00,       0,       42,
1109,"LBIL","I5a ", 115.0,"1987-1985",  34567,   -99999,        0, -99999,    2345,    12346,
1110,"LBIL","I5a ", 116.0,"N/A       ",  66912,   -99999,    33845, -99999,    5679,    39934,
1111,"LBIL","I5b ", 119.0,1    ,"XQ"
1112,"LBIL","I5b ", 120.0,"1992      ",      0,   -99999,    14567,7240.00,     100,     1656,
1113,"LBIL","I5b ", 126.0,"N/A       ",      0,   -99999,    14567, -99999,     100,     1656,
1114,"LBIL","I5c ", 129.0,none,"XQ"
1115,"LBIL","I5d ", 139.0,none,"XQ"
1116,"LBIL","I5e ", 149.0,none,"XQ"
1117,"LBIL","I5f ", 159.0,none,"XQ"
1118,"LBIL","I5g ", 169.0,none,"XQ"
1119,"LBIL","I5h ", 179.0,none,"XQ"
1120,"LBIL","I5i ", 189.0,none,"XQ"
1121,"LBIL","I5  ", 200.0,"N/A       ",  66912,       0,    48412, -99999,    5779,    41590,
```

```
  1         1         1         1         1         1
9 0         1         2         3         4         5
78901234567890123456789012345678901234567890123456789012345
Continuation of sample records:
        0,        0,        0,   -99999,     1908,"XQ"
        0,     1234,    12866,   -99999,        0,"XQ"
        0,        0,    19900,   -99999,        0,"XQ"
        0,        0,        0,   -99999,     4500,"XQ"
        0,        0,        0,   -99999,     1458,"XQ"
     4567,     2340,    26793,   -99999,        0,"XQ"
     4567,     3574,    33650,   -99999,      583,"XQ"

     1424,        0,        0,   -99999,    14435,"XQ"
     1424,        0,        0,   -99999,    14435,"XQ"

     5991,     3574,    33518,        0,    15018,"XQ"
```

RECORD TYPE I6 - SECTION ID RECORD

Field	Item	Example	Position	Description
1	Record Number	1124	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled..
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. (See attached COSA Code Table) Format: Include quotation marks.
3	Record Type	"I6a "	13-18	Always contains the letter I capitalized and and the number 6 with no space between them. Format: Include quotation marks.
4	Section ID Row Number	205.0	20-25	Section row number to identify sections of a table that requires reporting multiple rows of data for a particular item in Record Type I6. Valid IDs: 205.0, 225.0
5	Section Item Count	2 -or- none	27-30	Total number of rows or the total number of individual sets of rows in a section. If there are no data applicable to a section, enter the word 'none'. Valid Set of Rows: 210.0 to 218.0, 230.0 to 238.0 Format: Left justified and space filled. Do not use quotation marks
6	End of Record Code	"XQ"	32-35	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: All fields are separated by commas.

The ruler lines (123456789 etc.) included below and following with sample records are included only to assist the reader. Do not include ruler lines as records in the electronic filing.

```
        1         2         3     . . . . .    Ruler line
12345678901234567890123456789012345 . . . . .    Ruler line
Sample record:
1124,"LBIL","I6a ", 205.0,2   ,"XQ"

         - OR -

1124,"LBIL","I6a ", 205.0,none,"XQ"
```

RECORD TYPE I6 - SPECIAL CHARGES DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1125	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: Include quotation marks.
3	Record Type	"I6a "	13-18	Always contains the letter I capitalized and the number 6 with no space between them. Format: Include quotation marks.
4	Row Number	210.0	20-25	Row number as identified on pages 61 and 133-134 of the accompanying Report Definition. Valid ranges: 100.0 to 270.0 Include only those rows for which there are data to report. Format: Right justified and space filled with one decimal place. Since all applicable numbers are integers, append .0 to the row number.
5	Column (b) data	"Ann Arbor Datakit.." -or- "N/A " (spaces until pos. 83)	27-83	This field contains the data corresponding to column (b) as shown in the Forms Section of the accompanying Report Definition. Do NOT override designated N/As. Format: Left justified and space filled. Include quotation marks.
6	Column (c) data	3456	85-93	This field contains the data corresponding to column (c) as shown in the Forms Section of the accompanying Report Definition. Do NOT override designated N/As. Format: Right justified and space filled. Enter -99999 in integer rows where a field is designated by N/A. All other fields must be populated. If there are no data applicable to an open field enter zero. Enter -88888 in integer rows on the "public version" diskette to indicate that confidential treatment has been requested.
7	End of Record Code	"XQ"	95-98	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: Separate all fields with commas.

Footnote records are needed if any data for the current period differ materially from those for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition. Add one or more Type F3 record(s) (after the remaining Type C3 records) containing footnote text to explain the specific circumstances.

```
         1         2         3         4         5         6         7         8         9
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678
Sample records:
1122,"LBIL","I6  ", 100.0,"N/A                                                ",     2716,"XQ"
1123,"LBIL","I6  ", 200.0,"N/A                                                ",      123,"XQ"
1124,"LBIL","I6a ", 205.0,2    ,"XQ"
1125,"LBIL","I6a ", 210.0,"Ann Arbor Datakit                                  ",     3456,"XQ"
1126,"LBIL","I6a ", 211.0,"Illinois Waterfront Mall                           ",     4567,"XQ"
1127,"LBIL","I6a ", 219.0,"N/A                                                ",     8023,"XQ"
1128,"LBIL","I6  ", 220.0,"N/A                                                ",      716,"XQ"
1129,"LBIL","I6b ", 225.0,none,"XQ"
1130,"LBIL","I6  ", 240.0,"N/A                                                ",     6790,"XQ"
1131,"LBIL","I6  ", 250.0,"N/A                                                ",    14523,"XQ"
1132,"LBIL","I6  ", 260.0,"N/A                                                ",    30175,"XQ"
1133,"LBIL","I6  ", 270.0,"N/A                                                ",    32891,"XQ"
```

RECORD TYPE I7 - SECTION ID RECORD

Field	Item	Example	Position	Description
1	Record Number	1134	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled..
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. (See attached COSA Code Table) Format: Include quotation marks.
3	Record Type	"I7a "	13-18	Always contains the letter I capitalized and the number 7 with no space between them. Format: Include quotation marks.
4	Section ID Row Number	101.0	20-25	Section row number to identify sections of a table that requires reporting multiple rows of data for a particular item in Record Type I7. Valid IDs: 100.0, 200.0, 600.0, 700.0, 800.0, 900.0, 1300.0, 1400.0, 1500.0, 1600.0, 1700.0, 1800.0
5	Section Item Count	2 -or- none	27-30	Total number of rows or the total number of individual sets of rows in a section. If there are no data applicable to a section, enter the word 'none'. Valid Set of Rows: 101.0 to 198.0, 201.0 to 598.0, 601.0 to 698.0, 701.0 to 798.0, 801.0 to 898.0, 901.0 to 1298.0, 1301.0 to 1398.0, 1401.0 to 1498.0, 1501.0 to 1598.0, 1601.0 to 1698.0, 1701.0 to 1798.0, 1801.0 to 1898.0 Format: Left justified and space filled.. Do not use quotation marks.
6	End of Record Code	"XQ"	32-35	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: All fields are separated by commas.

The ruler lines (123456789 etc.) included below and following with sample records are included only to assist the reader. Do not include ruler lines as records in the electronic filing.

```
        1         2         3     . . . . .    Ruler line
12345678901234567890123456789012345 . . . . .    Ruler line
Sample record:
1134,"LBIL","I7a ", 100.0,2   ,"XQ"

        - OR -

1134,"LBIL","I7a ", 100.0,none,"XQ"
```

RECORD TYPE I7 - DONATIONS OR PAYMENTS FOR SERVICES RENDERED BY PERSONS OTHER THAN EMPLOYEES DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1135	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled..
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: Include quotation marks.
3	Record Type	"I7a "	13-18	Always contains the letter I capitalized and the number 7 with no space between them. Format: Include quotation marks.
4	Row Number	101.0	20-25	Row number as identified on pages 62-64 and 135-137 of the accompanying Report Definition. Valid ranges: 101.0 to 2000.0 Include only those rows for which there are data to report. Format: Right justified and space filled., with one decimal place. Since all applicable numbers are integers, append .0 to the row number.
5	Column (b) data	"Carrie M. Smith " -or- "N/A " (spaces unitl pos. 83)	27-83	This field contains the data corresponding to column (b) as shown in the Forms Section of the accompanying Report Definition. Do NOT override designated N/As. Format: Left justified and space filled.. Include quotation marks.
6	Column (c) data	1234	85-93	This field contains the data corresponding to column (c) as shown in the Forms Section of the accompanying Report Definition. Do NOT override designated N/As. Format: Right justified and space filled. Enter -99999 in integer rows where a field is designated by N/A. All other fields must be populated. If there are no data applicable to an open field enter zero. Enter -88888 in integer rows on the "public version" diskette to indicate that confidential treatment has been requested.
7	End of Record Code	"XQ"	95-98	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

RECORD TYPE 17 - DONATIONS OR PAYMENTS FOR SERVICES RENDERED BY PERSONS OTHER THAN EMPLOYEES
DATA RECORD(continued)

Note: Separate all fields with commas.

Footnote records are needed if any data for the current period differ materially from that for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition. Add one or more Type F3 record(s) (after the remaining Type C3 records) containing footnote text to explain the specific circumstances.

```
      1         2         3         4         5         6         7         8         9
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678
Sample records:
1134,"LBIL","I7a ", 100.0,2   ,"XQ"
1135,"LBIL","I7a ", 101.0,"Carrie M. Smith                                        ",    1234,"XQ"
1136,"LBIL","I7a ", 102.0,"Michigan State University                              ",    1567,"XQ"
1137,"LBIL","I7a ", 199.0,"N/A                                                    ",    2801,"XQ"
1138,"LBIL","I7b ", 200.0,none,"XQ"
1139,"LBIL","I7c ", 600.0,1   ,"XQ"
1140,"LBIL","I7c ", 601.0,"National Exchange Carrier                              ",    1145,"XQ"
1141,"LBIL","I7c ", 699.0,"N/A                                                    ",    1145,"XQ"
1142,"LBIL","I7d ", 700.0,none,"XQ"
1143,"LBIL","I7e ", 800.0,1   ,"XQ"
1144,"LBIL","I7e ", 801.0,"McDonnell Douglas Information Systems                  ",    4836,"XQ"
1145,"LBIL","I7e ", 899.0,"N/A                                                    ",    4836,"XQ"
1146,"LBIL","I7f ", 900.0,none,"XQ"
1147,"LBIL","I7g ",1300.0,none,"XQ"
1148,"LBIL","I7h ",1400.0,none,"XQ"
1149,"LBIL","I7i ",1500.0,none,"XQ"
1150,"LBIL","I7j ",1600.0,none,"XQ"
1151,"LBIL","I7k ",1700.0,none,"XQ"
1152,"LBIL","I7l ",1800.0,none,"XQ"
1153,"LBIL","I7  ",1900.0,"N/A                                                    ",   23567,"XQ"
1154,"LBIL","I7  ",2000.0,"N/A                                                    ",    1000,"XQ"
```

RECORD TYPE C3 - CONFIDENTIAL TREATMENT RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1155	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: Include quotation marks.
3	Record Type	"C3 "	13-18	Always contains the letter C capitalized and the number 3 with no space between them. Format: Include quotation marks.
4	Record Number (for the confidential data)	1036	20-23	This field contains the record number of the record which contains the data for which the carrier is seeking confidential treatment. If the request is for the entire column(s) or the entire submission, use 9999. If no confidential treatment is being requested, then use 0. Format: Right justified and space filled.
5	Table Number	"B1 "	25-30	This field contains the table number of the table in which the the confidential data appear. If the request is for the entire submission, enter "ZZZZ". If no confidential treatment is being requested then enter " ". Format: Include quotation marks. Left justified and space filled.
6	Row Number	2001.0	32-37	This field contains the row number of the row which contains the confidential data as identified in the accompanying Report Definition. If the request is for the entire column(s), an entire table or the entire submission, enter 9999.0. If no confidential treatment is being requested then use 0.0. Format: Right justified and space filled, with one decimal place. For row numbers that are integers, append .0 to the row number. For row numbers with one decimal place (e.g., 2215.1), use the row number as shown.
7	Column Label	"AB"	39-42	This field contains the column letter of the confidential data as identified in the accompanying Report Definition. If the request is for an entire row, an entire table, or the entire submission, enter "ZZ". If the request is for more than one column but less than the entire row, then populate this field and as many as needed of fields 8 thru 26. If no confidential treatment is requested, then enter " " in all of fields 7 thru 26. Format: Include quotation marks. left justified and space filled.

RECORD TYPE C3 - CONFIDENTIAL TREATMENT RECORD (continued)

Field	Item	Example	Position	Description
8	Second Column Label	"AC"	44-47	.....
9	Third Column Label	"AD"	49-52	. Fields 8 thru 26 are similar
.				. to Field 7 and are used
.				. when the request is for
.				. the same row and more than
.				. one column.
26	Twentieth Col. Label	" "	134-137	..... Otherwise, enter " ".
27	End of Record Code	"XQ"	139-142	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: All fields are separated by commas.

```
         1         2         3         4         5         6         7         8         9
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678
Sample records:
1155,"LBIL","C3  ",1036,"B1  ",2001.0,"AB","AC","AD",,  ,,  ,,  ,,  ,,  ,,  ,,  ,,  ,,
1156,"LBIL","C3  ",1057,"B1  ",2215.1,"AE","AF",,  ,,  ,,  ,,  ,,  ,,  ,,  ,,  ,,  ,,
1157,"LBIL","C3  ",9999,"B1  ",9999.0,"BB",,  ,,  ,,  ,,  ,,  ,,  ,,  ,,  ,,  ,,  ,,
1158,"LBIL","C3  ",1279,"I3  ", 100.0,"ZZ",,  ,,  ,,  ,,  ,,  ,,  ,,  ,,  ,,  ,,  ,,

                                        - OR -

1155,"LBIL","C3  ",   0,"    ",   0.0,"  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",

 1         1         1         1         1
 90        1         2         3         4
 9012345678901234567890123456789012345678901234
Continuation of sample records:
"  ","  ","  ","  ","  ","  ","  ","  ","  ","XQ"
"  ","  ","  ","  ","  ","  ","  ","  ","  ","XQ"
"  ","  ","  ","  ","  ","  ","  ","  ","  ","XQ"
"  ","  ","  ","  ","  ","  ","  ","  ","  ","XQ"

                                        - OR -

"  ","  ","  ","  ","  ","  ","  ","  ","XQ"
```

RECORD TYPE F3 - FOOTNOTE TEXT RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1159	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: Include quotation marks.
3	Record Type	"F3 "	13-18	Always contains the letter F capitalized and the number 3 with no space between them. Format: Include quotation marks.
4	Record Number (for the footnoted data)	1035	20-23	This field contains the record number of the record which contains the footnoted data. If the footnote pertains to the entire column(s), an entire table, or the entire submission, use 9999. Format: Right justified and space filled.
5	Table Number	"B1 "	25-30	This field contains the table number of the table in which the footnoted data appears. If the footnote pertains to an entire table, use "ZZZZ". Format: Include quotation marks. Left justified and space filled.
6	Row Number	2001.0	32-37	This field contains the row number of the row which contains the footnoted data as identified in the accompanying Report Definition. If the footnote pertains to the entire column(s), an entire table, or the entire submission, enter 9999.0. Format: Right justified and space filled, with one decimal place. For row numbers that are integers, append .0 to the row number. For row numbers with one decimal place (e.g., 2215.1), use the row number as shown.
7	Column Label	"AE"	39-42	This field contains the column letter(s) of the footnoted data as identified in the accompanying Report Definition. If the footnote pertains to an entire row, an entire table, or the entire submission, enter "ZZ". Format: Include quotation marks. Left justified and space filled.

RECORD TYPE F3 - FOOTNOTE TEXT RECORD (continued)

Field	Item	Example	Position	Description
8	Footnote Number	1	44-46	The number of this particular footnote. Valid range: 1 to 999. Format: Right justified and space filled.
9	Sequence Number	1	48-49	The sequence number of the record within the footnote. In other words, the order of the specific record in the sequence of records which, when combined, will provide the entire footnote. Valid range: 1 to 99. Format: Right justified and space filled.
10	Footnote Text	"Footnote text (Spaces until pos. 107) "	51-107	The text of the footnote or of the continuation line. Format: Include quotation marks at the beginning and end of this field and left justify within these quotation marks.
11	End of Record Code	"XQ"	109-112	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: All fields are separated by commas.

```
         1         2         3         4         5         6         7         8         9         1         1
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012
Sample records:
1159,"LBIL","F3  ",1049,"A4b ", 210.0,"C ",  1, 1,"Footnote 1 pertains to column C Table A-4                 ","XQ"
1160,"LBIL","F3  ",1036,"B1  ",2001.0,"AE",  2, 1,"Footnote text for footnote 1                             ","XQ"
1161,"LBIL","F3  ",1036,"B1  ",2001.0,"AE",  2, 2,"continuation text for footnote 1                         ","XQ"
1162,"LBIL","F3  ",1036,"B1  ",2001.0,"AE",  2, 3,"last line of footnote 1                                  ","XQ"
1163,"LBIL","F3  ",1193,"X1  ",6112.0,"ZZ",  3, 1,"Footnote 3 pertains to all cols. of Table I-1 row 6112.","XQ"
1164,"LBIL","F3  ",9999,"I3  ",9999.0,"B ",  4, 1,"Footnote 4 pertains to all rows of Table I-3 column B  ","XQ"
1165,"LBIL","F3  ",1153,"I7  ",1900.0,"C ",  5, 1,"Footnote 5 pertains to Table I-7 row 1900.0 column C   ","XQ"
```

RECORD TYPE E4- ERRATUM RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1166	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: Include quotation marks.
3	Record Type	"E4 "	13-18	Always contains the letter E capitalized and the number 4 with no space between them. Format: Include quotation marks.
4	Record Number (for the corrected data)	1036	20-23	This field contains the record number of the record which contains the data which were corrected in this submission. If the entire column(s), an entire table, or the entire submission was corrected, use 9999. Format: Right justified and space filled.
5	Table Number	"B1 "	25-30	This field contains the table number of the table in which the corrected data appear. If an entire table or submission was corrected, use "ZZZZ". Format: Include quotation marks. Left justified and space filled.
6	Row Number	2001.0	32-37	This field contains the row number of the of the row which contains the corrected data as identified in the accompanying Report Definition. If the entire column(s), an entire table, or the entire submission was corrected, enter 9999.0. Format: Right justified and space filled, with one decimal place. For row numbers that are integers, append .0 to the row number. For row numbers with one decimal place (e.g., 2215.1), use the row number as shown.
7	Column Label	"AB"	39-42	This field contains the column letter of the corrected data as identified in the accompanying Report Definition. If an entire row, an entire table, or the entire submission was corrected, enter "ZZ". If more than one column but less than the entire row was corrected, then populate this field and as many as needed of fields 8 thru 26. Format: Include quotation marks. Left justified and space filled.

RECORD TYPE E4 - ERRATUM RECORD (continued)

Field	Item	Example	Position	Description
8	Second Column Label	"AC"	44-47	.....
9	Third Column Label	"AD"	49-52	. Fields 8 thru 26 are similar
.				. to Field 7 and are used
.				. when the correction is in
.				. the same row and more than
.				. one column.
26	Twentieth Col. Label	" "	134-137	..... Otherwise, enter " ".
27	Footnote Number	1	139-141	This field contains the footnote number that explains the correction. If there is no footnote, use a zero. Format: Right justified and space filled.
28	End of Record Code	"XQ"	143-146	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: All fields are separated by commas.

```
         1         2         3         4         5         6         7         8         9
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678
Sample records:
1166,"LBIL","E4  ",1036,"B1  ",2001.0,"AE","AF","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1167,"LBIL","E4  ",1193,"X1  ",6112.0,"ZZ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1168,"LBIL","E4  ",9999,"I3  ",9999.0,"B ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1169,"LBIL","E4  ",1153,"I7  ",1900.0,"C ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
```

```
 1         1         1         1         1
90         1         2         3         4
9012345678901234567890123456789012345678901234567890123456
Continuation of sample records:
"  ","  ","  ","  ","  ","  ","  ","  ","  ",  2,"XQ"
"  ","  ","  ","  ","  ","  ","  ","  ","  ",  3,"XQ"
"  ","  ","  ","  ","  ","  ","  ","  ","  ",  4,"XQ"
"  ","  ","  ","  ","  ","  ","  ","  ","  ",  5,"XQ"
```

RECORD TYPE T1 - TRAILER RECORD

Field	Item	Example	Position	Description
1	Record Number	1170	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: Include quotation marks.
3	Record Type	"T1 "	13-18	Always contains the letter T capitalized and the number 1 with no space between them. Format: Include quotation marks.
4	Contact Person	"John Doe " (spaces until pos. 61)	20-61	The name of the person to contact if there are questions about the report. Format: Include quotation marks.
5	Telephone #	"(202) 555-1212 x123 "	63-84	The Contact Person's telephone number. Format: Include quotation marks.
6	End of Record Code	"XQ"	86-89	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: All fields are separated by commas.

One Trailer Record. The last record of the I records only.

```
         1         2         3         4         5         6         7         8
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789
Sample record:
1170,"LBIL","T1  ","John Doe                                                  ","(202) 555-1212 x123 ","XQ"
```

A. Introduction

This document contains the page layout and detailed specifications for the paper report to be filed as FCC Report 43-02, the ARMIS USOA Report.

B. General Instructions

1. See sections B and C on pages 1 and 2 of the accompanying Reporting Procedures for a discussion of the Confidential Version, the Public Version, and the Unrestricted Version of this report and for a definition and discussion of data items that are "Not Available" or are "Withheld."

2. The ruler lines included on the page layouts with the column titles are included only to assist the reader. Do not include ruler lines as lines in the report.

3. The paper report must be printed on 8 1/2 inch by 11 inch paper. For ease of preparation, an original may be produced on larger paper and reduced to this size for submission. Copies filed must be legible and permanent, in black ink. The report may be printed in portrait mode (8 1/2 inches across the top of the page) or landscape mode (11 inches across the top of the page). In portrait mode, the printing should not be smaller than 17 characters per inch and 8 lines per inch; in landscape mode, the printing should not be smaller than 15 characters per inch and 10 lines per inch.

C Data Entry Conventions

1. If an entry is to be a subtraction, indicate so by placing a minus sign in the column immediately preceding the numeric data, e.g., use -4 or (4), NOT - 4.

2. Tables requiring the use of specific row numbers for a set of rows in a particular section of a table should follow the sequence patterns as shown on the Forms section of the accompanying Report Definition.

3. Tables requiring the entry of multiple rows of data for a particular section of a table should enter data in only those rows for which there are data to report. If there are no data to report in a section of the table or on the entire table, include the table in the paper report with no data entries.

4. Tables requiring the use of row numbers that are associated with a state code or name, should use the assigned row numbers and the state name on the paper report, not the state code, as shown on the State Row Numbers and Codes Reference Table of the accompanying Report Definition.

5. In any data field requiring the entry of a state or territory (e.g.,State of Incorporation, State of Operation, etc.) enter on the paper Report the state name, not the state code, as shown on the State Row Numbers and Codes Reference Table of the accompanying Report Definition.

6. Data fields requiring an entry of a date (e.g., Date of Incorporation) or year (e.g., Term Expired or Current Term Will Expire) should enter date as "mmddyyyy" (12031992) and the year as "yyyy" (1993).

7. Items that need not be reported because they do not apply are designated by N/A. If a "Public Version" report is filed, enter W/H in any numeric data field for which data are "Withheld". **DO NOT** override N/As. If a reporting carrier wishes to apply data to a field containing an N/A, the carrier must enter, as a footnote to the field, the amount(s) and an explanation. All other fields must be populated. If there are no data applicable to an open field enter zero.

8. Footnotes are to be included on the footnote table(s) of the paper report, not on individual table pages.

D. **Rounding Conventions**

1. As specified in the accompanying Report Definition, all dollar amounts must be rounded to the nearest thousand dollars.

2. All percentage amounts (e.g., Expected Long Term Return On Assets), must be entered in percent and must be rounded to two places.

   Example: 12 2/3 percent should be entered as 12.67

3. All ratios must be rounded to two places. Service life (e.g., Bases of Charges for Depreciation) must be rounded to one decimal place.

4. Unless otherwise indicated, account balances must reflect the results of operations as of the end of the reporting period (December 31, 19xx).

E. **Footnotes**

1. If any data for the current period differs materially from those for the previous period and the difference is not self-explanatory but was caused by unusual circumstances not explained in a previous report, then include footnote text to explain the specific circumstances.

2. If the reporting carrier does not follow the procedures described in the row and column instructions of the attached Repor Definition, it must explain any deviations from those procedures in an explanatoy footnote. Such footnotes must provide detailed explanations of the procedures actually used by the carrier and its specific reasons for deviating from procedures prescribed by the Commission's Rules. This provision should not be interpreted to mean that deviations from the prescribed rules will automatically be approved by the Commission.

3. Footnotes must be included in the footnote table(s) of the paper report, not on individual table pages.

F. **Errata**

1. Carriers are under a legal obligation to correct any erroneous data discovered in FCC Report 43-02. Submission containing corrected data must include references to indicate which data items were corrected since previous submission.

2. These references must be included in the erratum table(s) of the paper report.

E. **Page Layouts**

1. The page layout for this report is illustrated in the Forms Section of the accompanying Report Definition.

2. The number of rows on a page may vary between carriers, but the column headings must appear as specified on the page layout for each table.

3. The following note must appear at the bottom of all pages, where applicable. THE COMPANY HAS REQUESTED CONFIDENTIAL TREATMENT FOR SOME DATA ON THIS PAGE. SEE THE CONFIDENTIAL TREATMENT TABLE FOR SPECIFIC INFORMATION.

4. The Paper Report will consist of a cover page and the following pages in order, whether there are data to report on the table or not:

	TITLES	Illustrated in Paper Report Specs. on Page
	COVER PAGE	
	The Cover Page	5
Schedule/ Table		Illustrated in Report Definition Forms on Page
	CORPORATE INFORMATION SCHEDULES	
C-1	Identity of Respondent	6
C-2	Control Over Respondent	7
C-3	Board of Directors and General Officers	8
C-4	Stockholders	9
C-5	Important Changes During the Year	10-13
	BALANCE SHEET SCHEDULES	
B-1	Balance Sheet Accounts	14-17
B-2	Statement of Cash Flows	18
B-3	Investments In Affiliated Companies	19-24
B-4	Analysis of Assets Purchased From or Sold to Affiliates	25
B-5	Analysis of Entries In Accumulated Depreciation	26-29
B-6	Summary of Investment and Accumulated Depreciation by Jurisdiction	30
B-7	Bases of Charges for Depreciation	31
B-8	Capital Leases	32
B-9	Deferred Charges	33
B-10	Accounts Payable to Affiliates	34
B-11	Long-Term Debt	35
B-12	Net Deferred Income Taxes	36-38
B-13	Other Deferred Credits	39
B-14	Capital Stock	40
B-15	Capital Stock and Funded Debt Reacquired or Retired During the Year	41-42

INCOME STATEMENT SCHEDULES

I-1	Income Statement Accounts	43-48
I-2	Analysis of Services Purchased From or Sold to Affiliates	49
I-3	Pension Cost	50-53
I-4	Other Operating Taxes	54
I-5	Prepaid Taxes and Tax Accruals	55-60
I-6	Special Charges	61
I-7	Donations or Payments for Services Rendered by Persons Other Than Employees	62-64

STANDARD PAPER REPORT TABLES

	Illustrated in Paper Report Specs. on Page
The Confidential Treatment Table (at least one page and as many pages as needed)	6
The Footnote Table (at least one page and as many pages as needed)	7
The Erratum Table (for submission number 2 or higher, as many as needed)	8

CERTIFICATION

The Certification Page	9

FCC Report 43-02
December 1994

Approved by OMB
3060-0395
Expires 4/30/96
Estimated Avg. Burden Per Response: 899 Hrs

FEDERAL COMMUNICATION COMMISSION
WASHINGTON, D.C. 20554

ARMIS USOA REPORT
For the Year Ended December 31, 19_____

Name of Company:

Address of Company:

FCC Report 43-02 is prescribed for every local exchange carrier with operating revenues of $100 million or more. The ARMIS USOA Report collected the operating results of the carriers: total activities for every account in the USOA, as specified in Part 32 of the Commission's Rules. The ARMIS USOA Report specifies information requirements in a consistent format and is essential to the FCC to monitor revenue requirements, rate of return, jurisdictional separations and access charges.
Your response is mandatory.

Public reporting burden for this collection of information is estimated to average 899 hours per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of Managing Director, Washington, D.C. 20554, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

FCC REPORT 43-02
ARMIS USOA REPORT

Approved by OMB
3060-0395
Expires 04/30/96

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy to mmm yyyy CONF. TREATMENT TABLE
COSA: xxxx PAGE 1 OF x

CONFIDENTIAL TREATMENT TABLE

Table	Row	Column(s)
(a)	(b)	(c)
xxxx	1234.1	xx,xx,xx,xx, x, x, x, x, x, x, x, x, x, x, x, x,... Ruler Line

sample entries:

B1	2001	AB,AC,AD
B1	2215.1	AE,AF
B1	ALL	BB
I1	730	ALL
I1	790	ALL

THE COMPANY HAS REQUESTED CONFIDENTIAL TREATMENT FOR THE ABOVE DATA IN THIS REPORT.

-OR-

THE COMPANY HAS NOT REQUESTED CONFIDENTIAL TREATMENT FOR ANY DATA IN THIS REPORT.

FCC REPORT 43-02
ARMIS USOA REPORT

Approved by OMB
3060-0395
Expires 04/30/96

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy to mmm yyyy FOOTNOTE TABLE
COSA: xxxx PAGE 1 OF x

FOOTNOTE TABLE

Table	Row	Col	FN#	Footnote
(a)	(b)	(c)	(d)	(e)
xxxx	1234.1	xxx	12	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx ... Ruler Line
sample entries:				
A4	210.0	C	1	Footnote 1 pertains to column C of Table A-4
B1	2001.0	AE	2	Footnote text for footnote 2 continuation text for footnote 2 last line of footnote 2
I1	6112.0	ALL	3	Footnote 3 pertains to all cols. of Table I-1 row 6112.0
I3	ALL	B	4	Footnote 4 pertains to all rows of Table I-3 column B
I7	1900.0	C	5	Footnote 5 pertains to Table I-7 row 1900.0 column C

-OR-

THERE ARE NO FOOTNOTES FOR THIS SUBMISSION.

FCC REPORT 43-02
ARMIS USOA REPORT

Approved by OMB
3060-0395
Expires 04/30/96

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy to mmm yyyy ERRATUM TABLE
COSA: xxxx PAGE 1 OF x

ERRATUM TABLE

Table (a)	Row (b)	Column(s) (c)	FN# (d)	
xxxx	1234.1	xx,xx,xx,xx, x, x, x, x, x, x, x, x, x, x, x, x,	12	... Ruler Line

sample entries:

B1	2001	AE,AF	2
I1	6112.0	ALL	3
I3	ALL	B	4
I7	1600.0	C	5

THE ABOVE DATA HAVE BEEN CORRECTED IN THIS SUBMISSION.
SEE THE FOOTNOTE TABLE FOR FOOTNOTES WHERE APPLICABLE.

CERTIFICATION

I certify that I am an officer of _____;
that I have examined the foregoing report _____and that to the best of my knowledge, information, and belief, all statements of fact contained in this report are true and that said report is an accurate statement of the affairs of the above named respondent in respect to the data set forth herein for the period from _____ to _____.

PRINTED NAME _____

POSITION _____

SIGNATURE _____

DATE _____

(Persons making willful false statements in this report form can be punished by fine or imprisonment under the Communications Act, 47 U.S.C. 220(e).)

CONTACT PERSON _____

TELEPHONE NUMBER _____

APPENDIX C

This document provides the instructions for FCC Reports 43-03, the ARMIS Joint Cost Report, which was adopted by the Commission in CC Docket No. 86-182. The instructions consist of the following five sections, which are attached:

1. Reporting Procedures - details on the specific procedures to be followed when submitting this report to the Commission.

2. Report Definition - an illustration of the rows and columns to be reported and their definitions.

3. Automated Report Specification - the detailed automated data processing (ADP) specifications for the automated report to be filed.

4. Paper Report Specifications - the page layout and detailed specifications for the paper report to be filed.

A. Introduction

This document contains details on the specific procedures to be followed when submitting FCC Report 43-03, the ARMIS Joint Cost Report, to the Commission.

B. General Information

1. FCC Report 43-03 was adopted by the Commission in the ARMIS Order, Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 69 of the FCC's Rules), CC Docket No. 86-182, 2 FCC Rcd 5770 (1987). The report is prescribed for every local exchange carrier with operating revenues in excess of $100 million.

2. Affected carriers shall file by April 1 of each year the report for the previous calendar year. The inial report will be filed by April 1, 1995 and will contain data for the calendar year 1994.

3. The report shall be filed on a study area (jurisdiction) basis.

4. Carriers seeking proprietary treatment for some data must provide two versions of each paper and automated report. The Confidential Version must contain all the required information (Confidential Treatment Tables/Data Records are provided to identify confidential data). The Public Version should not include data for which the carrier is seeking proprietary treatment. The carrier should prominently label the paper report and the diskette containing information subject to a claim of confidentiality to prevent inadvertent disclosure.

5. Carriers not seeking proprietary treatment for any data should provide only one version of each paper report and diskette, and the paper report and the diskette should be labeled the Unrestricted Version.

6. The Confidential Treatment Tables/Data Records are to be included in all reports but are not a substitute for applying for confidential treatment with this Commission following established Commission procedures.

7. Each report and diskette must be clearly labeled to include the report number, company, study area, period, COSA code, version and submission number. The report number is 43-03, which identifies the filing as the ARMIS Joint Cost Report. The period identifies the year covered by the report. See the attached COSA Code Table (CO = Company, SA = Study Area) for a list of companies and their respective COSAs. The version refers to whether the filing is the Confidential, Public or Unrestricted Version. The submission number is defined as follows: Submission 0 is for test data purposes only. Submission 1 is the first submission of a year's data. Higher numbers (2, 3, etc.) would be used if needed for successive revisions to correct that year's submission.

8. All correspondence and pleadings shall identify the proceeding as CC Docket 86-182.

C. Data Items That Are "Not Available" or Are "Withheld"

1. The term "Not Available" is used below to refer only to those items which the Commission ruled are not applicable to a particular row/column or are not required for a particular filing entity. The

Confidential Version must contain values for all of the data items except those items which are "Not Available." If, in addition to the required study area reports, a carrier submits a report which combines data for more than one study area, and this report includes a field such as a sum, a ratio, or a percentage that cannot be computed completely and accurately because it relies on another item which the Commission has ruled is a "Not Available" item, then that field is also considered to be "Not Available."

2. The term "Withheld" is used below to refer only to those items for which the carrier has applied for confidential treatment with the Commission and is only applicable to the Public Version. If a field such as a sum, a ratio or percentage relies on an item or items which have been withheld and that field is not also withheld, then it must include the withheld amount. For example, a carrier could withhold the individual values for two of three numbers which are totaled. If the carrier does not also apply for confidential treatment for the total, then that total must be the sum of all three numbers, not just the one which was not withheld. The Public Version must contain values for all of the data items except those items which are "Not Available" or those items which have been "Withheld".

3. See paragraph C.5 in the attached Automated Report Specifications and paragraph C.2 in the attached Paper Report Specifications for data entry conventions for these items.

D. Where to File

1. Carriers submitting FCC Report 43-03 should consult the schedule below which details the number of copies required and the location to which those copies should be delivered.

2. Carriers are reminded that they must serve a copy of either the Unrestricted Version or the Public Version of both the paper report and the automated report (diskette) on the FCC contractor for public records duplication.

NUMBER OF COPIES

	Trans-mittal Letter	Paper Report	Automated Report (diskette)
FCC Secretary Room 222 1919 M Street, N.W. Washington, D.C. 20554	1	-	-
FCC Common Carrier Bureau Accounting & Audits Div. 2000 L Street Rm 812 Washington, D.C. 20554	2	2	2

	Trans-mittal Letter	Paper Report	Automated Report (diskette)
FCC Common Carrier Bureau Industry Analysis Div. Room 100 1250 23rd Street, N.W. Washington, D.C. 20554	1	1	1
International Transcription Service, Inc. (ITS) Rm. 246 2100 M Street, N.W. Suite 140 Washington, D.C. 20037	1	1	1

E. Footnotes

1. If any data for the current period differs materially from that for the previous period and the difference is not self-explanatory but was caused by unusual circumstances not explained in a previous report, then include footnote text to explain the specific circumstances.

2. If the reporting carrier does not follow the procedures described in the row and column instructions of the attached Report Definition, it must explain any deviations from those procedures in an explanatory footnote. Such footnotes must provide detailed explanations of the procedures actually used by the carrier and its specific reasons for deviating from procedures prescribed by the Commission's Rules. This provision should not be interpreted to mean that deviations from the prescribed rules will automatically be approved by the Commission.

3. This footnote text must be included in the Footnote Text Records and the Footnote Table as specified in the attached Automated Report Specifications.

F. Errata

1. Carriers are under a legal obligation to correct any erroneous data discovered in FCC Report 43-03. Submissions containing corrected data must include references to indicate which data items were corrected since previous submission.

2. These references must be included in the Erratum Records and the Erratum Table as specified in the attached Automated Report Specifications and the attached Paper Report Specifications.

G. Certification

1. Carriers must certify the accuracy of the data submitted in FCC Report 43-03 by including a signed certification statement as the last page of the paper report.

2. The text of the certification statement is included on page 6 of the attached Paper Report Specifications.

H. Waivers

1. If a carrier determines that it will be unable to provide data required by FCC Report 43-03, it must file an application for waiver with the Commission following established Commission procedures. All such requests from a carrier should be included in a single application. The application must demonstrate good cause for reporting a different or lower level of detail and indicate how these deficiencies will be corrected.

2. Carriers are strongly encouraged to comply with the requirements. Omission of individual data items or entries, without request for waiver, is unacceptable. One reason that compliance with the full requirements is so important is that omission of any single data entry by any carrier will jeopardize the accuracy of aggregate industry information.

I. Public Information

1. The public or unrestricted versions of the paper reports filed as Report 43-03 may be examined by the public from 9:00 to 12:00 p.m. and from 1:00 to 4:00 p.m., Monday through Friday, in Room 812, 2000 L Street, N.W., Washington, D.C.

2. Copies of the public or unrestricted versions of the paper or automated reports filed as FCC Report 43-03 may be obtained from the FCC's contractor for public records duplication, ITS at 2100 M Street N.W. Suite 140, Washington, D.C. 20037. Parties should contact Wilbur Thomas or ITS (202) 857-3800.

For further information regarding these procedures, contact:

Barbara Van Hagen
FCC Common Carrier Bureau
Accounting and Audits Division
(202) 418-0830

Approved by OMB*
3060-0395
Expires 08/31/95

Estimated Average Burden Hours Per Response: 200 hours

SUMMARY

This document provides the Report Definition for FCC Report 43-03, the ARMIS Joint Cost Report, and lists the annual revenue requirement and joint cost data which must be provided annually for each study area. It contains the following:

	Pages
Table I - Regulated/Nonregulated Data	2-15
Row and Column Description	16-19
Certification	20

All amounts must be rounded to the nearest thousand dollars. Unless otherwise indicated, account balances must reflect the result of operations as of the end of the reporting period (December 31, 19xx).

Items which need not be reported because they do not apply are designated by N/A. All other fields must be populated. If there are no data applicable to a given field, enter zero.

Do not include explanatory notes in the transmittal letter; such notes must be included in the Footnotes section of the filing.

NOTICE: The ARMIS Joint Cost Report collects the study area level data for regulated and nonregulated operations for those accounts which are related to a carrier's revenue requirement. The ARMIS Joint Cost Report specifies information requirements in a consistent format and is essential to the FCC to monitor revenue requirements, joint cost allocations, jurisdictional separations and access charges. Your response is mandatory.

Public reporting burden for this collection of information is estimated to average 200 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimated or any other aspect of this collection of information, including suggestions for reducing the burden to the Federal Communications Commission, Office of Managing Director, Washington DC 20554, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington DC 20503.

*Revisions made herein are subject to OMB review.

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title (a)	Total (b)	Directly Assigned		Attributed		Generally Allocated	
			Regulated (c)	Nonreg. (d)	Regulated (e)	Nonreg. (f)	Regulated (g)	Nonreg. (h)
	REVENUES							
	Local Network Srvcs							
5001	Basic area revenue			N/A	N/A	N/A	N/A	N/A
5002	Original ext area			N/A	N/A	N/A	N/A	N/A
5003	Cellular mobile			N/A	N/A	N/A	N/A	N/A
5004	Other mobile servc			N/A	N/A	N/A	N/A	N/A
510	Bsc loc srvc (A 5000)			N/A	N/A	N/A	N/A	N/A
5010	Public telephone			N/A	N/A	N/A	N/A	N/A
5040	Local private line			N/A	N/A	N/A	N/A	N/A
5050	Customer premises			N/A	N/A	N/A	N/A	N/A
5060	Other local exchange			N/A	N/A	N/A	N/A	N/A
5069	Other local settles			N/A	N/A	N/A	N/A	N/A
520	Basic local srvc			N/A	N/A	N/A	N/A	N/A
	Network Access Srvc							
5081	End user			N/A	N/A	N/A	N/A	N/A
5082	Switched access			N/A	N/A	N/A	N/A	N/A
5083	Special access			N/A	N/A	N/A	N/A	N/A
5084	State access			N/A	N/A	N/A	N/A	N/A
5080	Network access			N/A	N/A	N/A	N/A	N/A
	Toll Network Service							
5100	LD msg rev (Class A)			N/A	N/A	N/A	N/A	N/A
5111	LD Inward-only			N/A	N/A	N/A	N/A	N/A
5112	LD Outward-only			N/A	N/A	N/A	N/A	N/A
5110	Unidirectional LD			N/A	N/A	N/A	N/A	N/A
5121	Subvoice LD pvt ntwk			N/A	N/A	N/A	N/A	N/A
5122	Voice LD pvt network			N/A	N/A	N/A	N/A	N/A
5123	Audio LD pvt network			N/A	N/A	N/A	N/A	N/A
5124	Video LD pvt network			N/A	N/A	N/A	N/A	N/A
5125	Digital LD pvt ntwk			N/A	N/A	N/A	N/A	N/A
5126	LD pvt ntwk switch			N/A	N/A	N/A	N/A	N/A
5128	Other LD pvt ntwk			N/A	N/A	N/A	N/A	N/A
5129	Other LD pvt settle			N/A	N/A	N/A	N/A	N/A
5120	LD private network			N/A	N/A	N/A	N/A	N/A
5160	Other LD			N/A	N/A	N/A	N/A	N/A
5169	Other LD settlement			N/A	N/A	N/A	N/A	N/A
525	LD ntwk services rev			N/A	N/A	N/A	N/A	N/A
	Miscellaneous							
5230	Directory							
5240	Rent			N/A	N/A	N/A	N/A	N/A
5250	Corporate operations			N/A	N/A	N/A	N/A	N/A
5261	Special billing arrng			N/A	N/A	N/A	N/A	N/A
5262	Customer operations			N/A	N/A	N/A	N/A	N/A
5263	Plant operations			N/A	N/A	N/A	N/A	N/A
5264	Other incidental reg			N/A	N/A	N/A	N/A	N/A
5269	Other settlements			N/A	N/A	N/A	N/A	N/A
5260	Misc. (Class A)			N/A	N/A	N/A	N/A	N/A

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title (a)	Total Regulated (i)	Total Nonreg. (j)	SNFA and Intra-co. Adjustmnts (k)	Other Adjustmnts (l)	Subject to Separation (m)
	REVENUES					
	Local Network Srvcs					
5001	Basic area revenue		N/A		N/A	N/A
5002	Original ext area		N/A		N/A	N/A
5003	Cellular mobile		N/A		N/A	N/A
5004	Other mobile servc		N/A		N/A	N/A
510	Bsc loc srvc (A 5000)		N/A		N/A	N/A
5010	Public telephone		N/A		N/A	N/A
5040	Local private line		N/A		N/A	N/A
5050	Customer premises		N/A		N/A	N/A
5060	Other local exchange		N/A		N/A	N/A
5069	Other local settles		N/A		N/A	N/A
520	Basic local srvc		N/A			
	Network Access Srvc					
5081	End user		N/A			
5082	Switched access		N/A			
5083	Special access		N/A			
5084	State access		N/A			
5080	Network access		N/A			
	Toll Network Service					
5100	LD msg rev (Class A)		N/A		N/A	N/A
5111	LD Inward-only		N/A		N/A	N/A
5112	LD Outward-only		N/A		N/A	N/A
5110	Unidirectional LD		N/A		N/A	N/A
5121	Subvoice LD pvt ntwk		N/A		N/A	N/A
5122	Voice LD pvt network		N/A		N/A	N/A
5123	Audio LD pvt network		N/A		N/A	N/A
5124	Video LD pvt network		N/A		N/A	N/A
5125	Digital LD pvt ntwk		N/A		N/A	N/A
5126	LD pvt ntwk switch		N/A		N/A	N/A
5128	Other LD pvt ntwk		N/A		N/A	N/A
5129	Other LD pvt settle		N/A		N/A	N/A
5120	LD private network		N/A		N/A	N/A
5160	Other LD		N/A		N/A	N/A
5169	Other LD settlement		N/A		N/A	N/A
525	LD ntwk services rev		N/A			
	Miscellaneous					
5230	Directory					
5240	Rent		N/A		N/A	N/A
5250	Corporate operations		N/A		N/A	N/A
5261	Special billing arrng		N/A		N/A	N/A
5262	Customer operations		N/A		N/A	N/A
5263	Plant operations		N/A		N/A	N/A
5264	Other incidental reg		N/A		N/A	N/A
5269	Other settlements		N/A		N/A	N/A
5260	Misc. (Class A)		N/A		N/A	N/A

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title (a)	Total (b)	Directly Assigned		Attributed		Generally Allocated	
			Regulated (c)	Nonreg. (d)	Regulated (e)	Nonreg. (f)	Regulated (g)	Nonreg. (h)
	REVENUES							
	Miscellaneous (contd)							
5270	Carrier bill and coll			N/A	N/A	N/A	N/A	N/A
5280	Nonregulated		N/A		N/A	N/A	N/A	N/A
5200	Miscellaneous							
	Uncollectible rev							
5301	Uncoll-telecomm							
5302	Uncoll-other							
5300	Uncollectible rev							
530	Net Revenues							

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title (a)	Total Regulated (i)	Total Nonreg. (j)	SNFA and Intra co. Adjustmnts (k)	Other Adjustmnts (l)	Subject to Separation (m)
	REVENUES					
	Miscellaneous (contd)					
5270	Carrier bill and coll		N/A		N/A	N/A
5280	Nonregulated	N/A		N/A	N/A	N/A
5200	Miscellaneous					
	Uncollectible rev					
5301	Uncoll-telecomm				N/A	N/A
5302	Uncoll-other				N/A	N/A
5300	Uncollectible rev					
530	Net Revenues					

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title (a)	Total (b)	Directly Assigned		Attributed		Generally Allocated	
			Regulated (c)	Nonreg. (d)	Regulated (e)	Nonreg. (f)	Regulated (g)	Nonreg. (h)
	EXPENSES							
	Plant Specific							
6112	Motor vehicle							
6113	Aircraft							
6114	Special purpose veh							
6115	Garage work equipment							
6116	Other work equipment							
6110	Network support							
6121	Land and building							
6122	Furniture and artwork							
6123	Office equipment							
6124	Gen purpose computer							
6120	General support							
6211	Analog electronic							
6212	Digital electronic							
6215	Electro-mechanical							
6210	Central office-swit							
6220	Operator systems							
	Central Off-Trans							
6231	Radio systems							
6232	Circuit equipment							
6230	Central office-trans							
6311	Station apparatus							
6341	Large PBX							
6351	Public tel term equip							
6362	Other terminal equip							
6310	Information O/T							
6411	Poles							
6421	Aerial cable							
6422	Underground cable							
6423	Buried cable							
6424	Submarine cable							
6425	Deep sea cable							
6426	Intrabldg ntwk cable							
6431	Aerial wire							
6441	Conduit systems							
6410	Cable and wire							
	Plant Non-Specific							
6511	PHFTU							
6512	Provisioning							
6510	Other PP&E expense							

COMPANY: XXXXXXXXXXXXXXXXXXXXXXXXXX
STUDY AREA: XXXXXXXXXXXXXXXXXX
PERIOD: From mmm yyyy To mmm yyyy
COSA: XXXX

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title (a)	Total Regulated (i)	Total Nonreg. (j)	SNFA and Intra co. Adjustments (k)	Other Adjustments (l)	Subject to Separation (m)
	EXPENSES					
	Plant Specific					
6112	Motor vehicle				N/A	N/A
6113	Aircraft				N/A	N/A
6114	Special purpose veh				N/A	N/A
6115	Garage work equipmen				N/A	N/A
6116	Other work equipment				N/A	N/A
6110	Network support					
6121	Land and building				N/A	N/A
6122	Furniture and artwor				N/A	N/A
6123	Office equipment				N/A	N/A
6124	Gen purpose computer				N/A	N/A
6120	General support					
6211	Analog electronic				N/A	N/A
6212	Digital electronic				N/A	N/A
6215	Electro-mechanical				N/A	N/A
6210	Central office-swit					
6220	Operator systems					
	Central Off-Trans					
6231	Radio systems				N/A	N/A
6232	Circuit equipment				N/A	N/A
6230	Central office-trans					
6311	Station apparatus				N/A	N/A
6341	Large PBX				N/A	N/A
6351	Public tel term equi				N/A	N/A
6362	Other terminal equip				N/A	N/A
6310	Information O/T					
6411	Poles				N/A	N/A
6421	Aerial cable				N/A	N/A
6422	Underground cable				N/A	N/A
6423	Buried cable				N/A	N/A
6424	Submarine cable				N/A	N/A
6425	Deep sea cable				N/A	N/A
6426	Intrabldg ntwk cable				N/A	N/A
6431	Aerial wire				N/A	N/A
6441	Conduit systems				N/A	N/A
6410	Cable and wire					
	Plant Non-Specific					
6511	PHFTU				N/A	N/A
6512	Provisioning				N/A	N/A
6510	Other PP&E expense					

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title (a)	Total (b)	Directly Assigned		Attributed		Generally Allocated	
			Regulated (c)	Nonreg. (d)	Regulated (e)	Nonreg. (f)	Regulated (g)	Nonreg. (h)
	EXPENSES							
	Plant Non-Specific							
6531	Power							
6532	Network admin.							
6533	Testing							
6534	Plant operations Adm							
6535	Engineering							
6530	Network operations							
6540	Access							
6561	Depreciation-TPIS							
6562	Depreciation-PHFTU							
6563	Amortization-tangible							
6564	Amortization-intang.							
6565	Amortization-other							
6560	Depreciation/Amortiz.							
	Customer Ops-Mkting							
6611	Product management							
6612	Sales							
6613	Product advertising							
6610	Marketing expense							
	Customer Ops-Service							
6621	Call completion							
6622	Number services							
6623	Customer services							
6620	Services expense							
	Corporate Operation							
6711	Executive							
6712	Planning							
6710	Executive & planning							
6721	Accounting & finance							
6722	External relations							
6723	Human resources							
6724	Information Mgt							
6725	Legal							
6726	Procurement							
6727	Research & dev							
6728	Other gen & admin.							
6720	General & Admin.							
6790	Prov uncoll note							
	Other Ops Inc/Exp							
7110	Income custom work							
7130	Return nonreg. use							
7140	Gain/loss foreign							
7150	Gain/loss land/artwks							
7160	Other ops gain/loss							
7100	Other ops inc/exp							

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title (a)	Total Regulated (i)	Total Nonreg. (j)	SNFA and Intra co. Adjustments (k)	Other Adjustments (l)	Subject to Separation (m)
	EXPENSES					
	Plant Non-Specific					
6531	Power				N/A	N/A
6532	Network admin.				N/A	N/A
6533	Testing				N/A	N/A
6534	Plant operations Adm				N/A	N/A
6535	Engineering				N/A	N/A
6530	Network operations					
6540	Access					
6561	Depreciation-TPIS				N/A	N/A
6562	Depreciation-PHFTU				N/A	N/A
6563	Amortization-tangible				N/A	N/A
6564	Amortization-intang.				N/A	N/A
6565	Amortization-other				N/A	N/A
6560	Depreciation/Amortiz.					
	Customer Ops-Mkting					
6611	Product management				N/A	N/A
6612	Sales				N/A	N/A
6613	Product advertising				N/A	N/A
6610	Marketing expense					
	Customer Ops-Service					
6621	Call completion				N/A	N/A
6622	Number services				N/A	N/A
6623	Customer services				N/A	N/A
6620	Services expense					
	Corporate Operation					
6711	Executive				N/A	N/A
6712	Planning				N/A	N/A
6710	Executive & planning					
6721	Accounting & finance				N/A	N/A
6722	External relations				N/A	N/A
6723	Human resources				N/A	N/A
6724	Information Mgt				N/A	N/A
6725	Legal				N/A	N/A
6726	Procurement				N/A	N/A
6727	Research & dev				N/A	N/A
6728	Other gen & admin.				N/A	N/A
6720	General & Admin.					
6790	Prov uncoll note					
	Other Ops Inc/Exp					
7110	Income custom work				N/A	N/A
7130	Return nonreg. use				N/A	N/A
7140	Gain/loss foreign				N/A	N/A
7150	Gain/loss land/artwks				N/A	N/A
7160	Other ops gain/loss				N/A	N/A
7100	Other ops inc/exp					

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title (a)	Total (b)	Directly Assigned		Attributed		Generally Allocated	
			Regulated (c)	Nonreg. (d)	Regulated (e)	Nonreg. (f)	Regulated (g)	Nonreg. (h)
	EXPENSES							
	Operating Taxes							
7210	Op inv tax cr-net							
7220	Op federal inc tax							
7230	Op state & local							
7240	Op other taxes							
7250	Prov defd inc taxes							
7200	Operating taxes							
	Nonoperating inc/exp							
7310	Dividend income							
7320	Interest income							
7330	Inc sinking/other							
7340	AFUDC							
7350	Gain/loss property							
7360	Other nonop income							
7370	Special charges							
7300	Nonoperating inc/exp							
	Nonoperating Taxes							
	Int & Related Items							
7510	Int on funded debt							
7520	Int exp-cap leases							
7530	Amot debt issuance							
7540	Other int deducted							
7500	Int & related items							
	Extraordinary items							
7610	Extraord income crs.							
7620	Extraord income chgs.							
7630	Current inc tax eff							
7640	Prov defd tax-net							
7600	Extraordinary items							
7910	Inc effects diff-net			N/A	N/A	N/A	N/A	N/A
7990	Nonreg. net income		N/A		N/A		N/A	
750	Total Expenses							

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title (a)	Total Regulated (i)	Total Nonreg. (j)	SNFA and Intra co. Adjustmnts (k)	Other Adjustmnts (l)	Subject to Separation (m)
	EXPENSES					
	Operating Taxes					
7210	Op inv tax cr-net				N/A	N/A
7220	Op federal inc tax				N/A	N/A
7230	Op state & local				N/A	N/A
7240	Op other taxes				N/A	N/A
7250	Prov defd inc taxes				N/A	N/A
7200	Operating taxes					
	Nonoperating inc/exp					
7310	Dividend income				N/A	N/A
7320	Interest income				N/A	N/A
7330	Inc sinking/other				N/A	N/A
7340	AFUDC				N/A	N/A
7350	Gain/loss property				N/A	N/A
7360	Other nonop income				N/A	N/A
7370	Special charges				N/A	N/A
7300	Nonoperating inc/exp					
	Nonoperating Taxes					
	Int & Related Items					
7510	Int on funded debt				N/A	N/A
7520	Int exp-cap leases				N/A	N/A
7530	Amot debt issuance				N/A	N/A
7540	Other int deducted				N/A	N/A
7500	Int & related items					
	Extraordinary items					
7610	Extraord income crs.				N/A	N/A
7620	Extraord income chgs.				N/A	N/A
7630	Current inc tax eff				N/A	N/A
7640	Prov defd tax-net				N/A	N/A
7600	Extraordinary items					
7910	Inc effects diff-net		N/A	N/A		
7990	Nonreg. net income	N/A		N/A	N/A	N/A
750	Total Expenses			N/A	N/A	N/A

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title (a)	Total (b)	Directly Assigned		Attributed		Generally Allocated	
			Regulated (c)	Nonreg. (d)	Regulated (e)	Nonreg. (f)	Regulated (g)	Nonreg. (h)
	PLANT-IN-SERVICE							
	Support Plant							
2111	Land							
2112	Motor vehicles							
2113	Aircraft							
2114	Special purpose veh							
2115	Garage work equip							
2116	Other work equip							
2121	Buildings							
2122	Furniture							
2123	Office equipment							
2124	Gen purpose computers							
2110	Land & support							
	Central Off-Switch							
2211	Analog elect switch							
2212	Digit elect switch							
2215	Electro-mech switch							
2210	Central off switch							
2220	Operator systems							
	Central Off-Trans							
2231	Radio systems							
2232	Circuit equipment							
2230	Transmission							
	Information O/T							
2311	Station apparatus							
2321	Customer prem wire							
2341	Large PBX							
2351	Public tel terminal							
2362	Other terminal							
2310	Informational O/T							

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title (a)	Total Regulated (i)	Total Nonreg. (j)	SNFA and Intra co. Adjustments (k)	Other Adjustments (l)	Subject to Separation (m)
	PLANT-IN-SERVICE					
	Support Plant					
2111	Land				N/A	N/A
2112	Motor vehicles				N/A	N/A
2113	Aircraft				N/A	N/A
2114	Special purpose veh				N/A	N/A
2115	Garage work equip				N/A	N/A
2116	Other work equip				N/A	N/A
2121	Buildings				N/A	N/A
2122	Furniture				N/A	N/A
2123	Office equipment				N/A	N/A
2124	Gen purpose computers				N/A	N/A
2110	Land & support					
	Central Off-Switch					
2211	Analog elect switch					
2212	Digit elect switch					
2215	Electro-mech switch					
2210	Central off switch					
2220	Operator systems					
	Central Off-Trans					
2231	Radio systems					
2232	Circuit equipment					
2230	Transmission					
	Information O/T					
2311	Station apparatus				N/A	N/A
2321	Customer prem wire				N/A	N/A
2341	Large PBX				N/A	N/A
2351	Public tel terminal				N/A	N/A
2362	Other terminal				N/A	N/A
2310	Informational O/T					

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title (a)	Total (b)	Directly Assigned		Attributed		Generally Allocated	
			Regulated (c)	Nonreg. (d)	Regulated (e)	Nonreg. (f)	Regulated (g)	Nonreg. (h)
	Cable & Wire Facil							
2411	Poles							
2421	Aerial cable							
2422	Underground cable							
2423	Buried cable							
2424	Submarine cable							
2425	Deep sea cable							
2426	Intrabuilding ntwk							
2431	Aerial wire							
2441	Conduit systems							
2410	Cable & wire facil							
	Amortization Assets							
2681	Capital leases							
2682	Leasehold Improvemnt							
2680	Amort tangible assets							
2690	Intangibles							
2001	TPIS							
	OTHER INVESTMENTS							
2002	PHFTU							
2003	TPUC-short term							
2004	TPUC-long term							
2005	Plant aquisitn adjust							
1220	Material and supplies							
1438	Defer maint. & retir.							
1439	Deferred charges							
1500	Other jurisd assets							
230	IS Cash Working Cap	N/A	N/A	N/A	N/A	N/A	N/A	N/A
370	Total Investment							
	RESERVES							
	Accum Depreciation							
3100	Accum depreciation							
3200	Accum depr-PHFTU							
	Accum Amortization							
3410	Accum amort-cap lease							
3420	Accum amort-lse imprv							
3400	Accum amort-tangibles							
3500	Accum amort-intang							
3600	Accum amort-other							
	Deferred Ops Inc Tax							
4100	Net current deferred							
4340	Net noncurrent defd							
	Other Deductions							
4040	Customers deposits							
4120	Other accru liab							
4360	Other deferred crs							
4370	Other jurisdictional							
495	Total Reserve							

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title (a)	Total Regulated (i)	Total Nonreg. (j)	SNFA and Intra co. Adjustmnts (k)	Other Adjustmnts (l)	Subject to Separation (m)
	Cable & Wire Facil					
2411	Poles				N/A	N/A
2421	Aerial cable				N/A	N/A
2422	Underground cable				N/A	N/A
2423	Buried cable				N/A	N/A
2424	Submarine cable				N/A	N/A
2425	Deep sea cable				N/A	N/A
2426	Intrabuilding ntwk				N/A	N/A
2431	Aerial wire				N/A	N/A
2441	Conduit systems				N/A	N/A
2410	Cable & wire facil					
	Amortization Assets					
2681	Capital leases				N/A	N/A
2682	Leasehold Improvemnt				N/A	N/A
2680	Amort tangible assets					
2690	Intangibles					
2001	TPIS					
	OTHER INVESTMENTS					
2002	PHFTU					
2003	TPUC-short term					
2004	TPUC-long term					
2005	Plant aquisitn adjust					
1220	Material and supplies					
1438	Defer maint. & retir.					
1439	Deferred charges					
1500	Other jurisd assets					
230	IS Cash Working Cap	N/A	N/A	N/A	N/A	
370	Total Investment					
	RESERVES					
	Accum Depreciation					
3100	Accum depreciation					
3200	Accum depr-PHFTU					
	Accum Amortization					
3410	Accum amort-cap lease				N/A	N/A
3420	Accum amort-lse imprv				N/A	N/A
3400	Accum amort-tangibles					
3500	Accum amort-intang					
3600	Accum amort-other					
	Deferred Ops Inc Tax					
4100	Net current deferred					
4340	Net noncurrent defd					
	Other Deductions					
4040	Customers deposits					
4120	Other accru liab					
4360	Other deferred crs					
4370	Other jurisdictional					
495	Total Reserve					

ROW INSTRUCTIONS

Every row item is not described below. Those rows omitted from the following instructions are Part 32 accounts and the amounts entered for these accounts should be reported pursuant to our Part 32 Rules. The following descriptions apply to those rows that are summarizations or need further clarification. Four digit row numbers indicate that there is a Part 32 account bearing the same number and title. Unless otherwise indicated, three digit row numbers indicate that there is no comparable Part 32 account.

Row	Description
510.	Basic Local Service Revenue (Class A Account 5000) - For Class A companies this amount is the total of Row/Account 5001 through 5004 (the balance of account 5000 for Class A companies).
520.	Basic Local Service Revenue (Class B) - For Class A Companies, this amount is total of Row/Account 510, 5010, 5040, 5050, 5060, and 5069. For Class B companies, this amount is the balance of account 5000.
5080.	Network Access Revenue - This amount is the total of rows 5081 through 5084.
5100.	Long Distance Message Revenue (Class A Companies only) - Class A companies should enter the balance of the Class A level account 5100.
5110.	Unidirectional Long Distance Revenue - This amount is the total of rows 5111 and 5112.
5120.	Long distance Private Network Revenue - This amount is the total of rows 5121 through 5129.
525.	Long Distance Network Services Revenue - Row 525 should be populated by both Class A and Class B companies. For Class A companies, this amount is the total of Row/Account 5100, 5110, 5120, 5160, and 5169. For Class B companies, this amount is the balance of account 5100.
5260.	Miscellaneous Revenue (Class A) - This amount is the total of rows 5261 through 5269.
5200.	Miscellaneous Revenue - This amount is the total of rows 5260, 5270 and 5280.
5300.	Uncollectible Revenue - This amount is the total of rows 5301 and 5302.
530.	Net Revenues - this amount is the total of rows 520, 5080, 5100, and 520 less row 5300.
6110.	Network Support Expense - This amount is the total of rows 6112 through 6116.
6120.	General Support Expenses - this amount is the total of rows 6121 through 6124.
6210.	Central Office Switching Expense - This amount is the total of rows 6211 through 6215.

6230. Central Office Transmission Expense - This is the total of rows 6231 and 6232.

6310. Information Origination.Termination - This amount is the total of rows 6311 through 6362.

6410. Cable and Wire Facilities Expense - This amount is the total of rows 6411 through 6441.

6510. Other Property Plant and Equipment Expenses - This amount is the total of rows 6511 and 6512.

6530. Network Operations Expenses - This amount is the total of rows 6531 through 6535.

6560. Depreciation and Amortization Expenses - This amount is the total rows 6561 through 6565.

6610. Marketing - This amount is the total of rows 6611 through 6613.

6620. Services - This amount is the total of rows 6621 through 6623.

6710. Executive and Planning - This amount is the total rows 6711 and 6712.

6720. General and Administrative - This amount is the total of rows 6721 through 6728.

7100. Other Operating Income and Expense - This amount is the total of rows 7110 through 7160.

7200. Operating Taxes - This amount is the total of rows 7210 through 7250.

7300. Nonoperating Income and Expense - This amount is the total of rows 7310 through 7370.

7500. Interest and Related Items - This amount is the total of rows 7510 through 7540.

7600. Extraordinary Items - This amount is the total of rows 7610 through 7640.

750. Total Expenses - This amount is the total of rows 6110, 6120, 6210, 6220, 6230, 6310, 6410, 6510, 6530, 6540, 6560. 6610, 6620, 6710, 6720, and 6790, plus or minus 7100, plus 7200, plus or minus 7300, plus 7500, plus or minus 7600, 7910, and 7990.

2110. Land and Support Assets - This amount equals the total of rows 2111 through 2124.

2210. Central Office - Switching - This amount equals the total of rows 2211 through 2215.

2230. Central Office - Transmission - This amount equals the total of rows 2231 and 2232.

2310. Information Origination/Termination - This amount equals the total of rows 2311 through 2362.

2410. Cable and Wire Facilities - This amount equals the total of rows 2411 through 2441.

2680. Amortizable Tangible Assets - This amount equals the total of rows 2681 and 2682.

2001. Telecommunications Plant In Service - This amount equals the total of rows 2110, 2210, 2220, 2230, 2310, 2410, 2680 and 2690.

230. Interstate Cash Working Capital - This amount equals that portion of investment required to meet current expenses. This amount shall be calculated in accordance with Part 65 of the Commission's Rules.

370. Total Investment - This amount equals the total of rows 2001, 2002, 2003, 2004, 2005, 1220, 1438, 1439, 1500 and 230.

3400. Accumulated Amortization - Tangible - This amount equals the total of rows 3410 and 3420.

495. Total Reserve - This amount equals the total of rows 3100, 3200, 3400, 3500, 3600, 4100, 4340, 4040, 4120, 4360 and 4370.

NOTE 1: Class B companies should enter Class B Account balances in the appropriate rows and "N/A" in all columns of the Class A level rows. Unless otherwise indicated, Class A companies must enter data in every row, including the Class B level accounts, to be consistent with the requirements of Part 36.

NOTE 2: The balance of account 7990 must be entered in row 5280.

COLUMN INSTRUCTIONS

Column	Description
(b)	Total - This amount reflects the operating result for each of the accounts itemized in this report, and includes all regulated and nonregulated company operations for each row. These amounts are represented prior to separation between state and interstate jurisdictions.
(c)	Directory Assigned-Regulated - This amount reflects that portion of each itemized account that is dedicated solely to regulated operations.
(d)	Directly Assigned-Nonregulated - This amount reflects that portion of each itemized account that is dedicated solely to nonregulated operations.
(e)	Attributed-Regulated - This amount reflects that portion of each itemized account that is allocated to regulated activities based on a direct measure of cost causation.
(f)	Attributed-Nonregulated - This amount reflects that portion of each itemized account that is allocated to nonregulated activities based on a direct measure of cost causation.
(g)	Generally Allocated-Regulated - This amount reflects that portion of each itemized account that is allocated to regulated activities based on the general allocator as described in Part 64.
(h)	Generally Allocated-Nonregulated - This amount reflects that portion of each itemized account that is allocated to nonregulated activities based on the general allocator as described in Part 64.
(i)	Total Regulated - This amount equals the total of columns (c), (e) and (g).
(j)	Total Nonregulated - This amount equals the total of columns (d), (f) and (h).
(k)	SNFA and Intra-company Adjustments - This amount reflects adjustments made to each account for costs related to shared network facility arrangements and intra-company subsidiary contracts.
(l)	Other Adjustments - This amount reflects all remaining adjustments, such as prior period adjustments, necessary to arrive at the amount subject to separations.
(m)	Subject to Separations - This amount reflects that portion of each account which must be allocated between state and interstate jurisdictions (column (i) less columns (k) and (l).
NOTE:	All data must be reported as booked with the exception of the data in columns (k), (l), and (m) which will be reported as adjusted.

CERTIFICATION

I certify that I am an officer of _____;
that I have examined the foregoing report _____and that to the best of my knowledge, information, and belief, all statements of fact contained in this report are true and that said report is an accurate statement of the affairs of the above named respondent in respect to the data set forth herein for the period from _____ to _____.

PRINTED NAME _____

POSITION _____

SIGNATURE _____

DATE _____

(Persons making willful false statements in this report form can be punished by fine or imprisonment under the Communications Act, 47 U.S.C. 220(e).)

CONTACT PERSON _____

TELEPHONE NUMBER _____

A. Introduction

This document contains the detailed automated data processing (ADP) specifications for the automated report to be filed as FCC Report 43-03, the ARMIS Joint Cost Report.

B. General Format and Media

1. All data must be submitted on 3.5 inch double-sided high density IBM-PC compatible diskettes.

2. All files must be coded in ASCII.

3. See sections B and C on pages 1 and 2 of the accompanying Reporting Procedures for a discussion of the Confidential Version, the Public Version, and the Unrestricted Version of this report and for a definition and discussion of data items that are "Not Available" or are Withheld."

4. The file name for each file has six components:

   a. the four letter COSA code (Co = Company, SA = Study Area, see attached COSA Code Table for a list of companies and their respective COSAs).
   b. the last two digits of the year which is covered by the data.
   c. the letters "JC".
   d. a decimal point.
   e. the letter "P", "C", or "U" to indicated whether this is the Public version, the Confidential version, or the only (Unrestricted) version since all data is non-confidential.
   f. two digits (zero filled) for the submission number. Submission 0 is for test data purposes only. Submission 1 is for the first submission of a year's data. Higher numbers (2, 3, etc.) will be used only if needed for successive revisions to correct that year's submission.

   For example, the file name for the Unrestricted Version of the initial Joint Cost Report data file to be submitted by Illinois Bell to cover the calendar year 1994, would be LBIL94JC.U01:

LBIL	COSA for Illinois Bell
94	Data for calendar year 94
JC	Joint Cost Report data file
.	decimal point
U	Unrestricted version
01	First submission of this year's data

5. A separate file must be prepared for each report. More than one file can be placed on the same diskette, as long as they cover the same period, version, and submission number.

C. Data Entry Conventions

1. If an entry is to be a subtraction, indicate so by placing a minus sign in the column immediately preceding the numeric data, e.g. use -4, NOT - 4 or (4).

2. Begin each data record in column 1 and make each record the proper length as specified in the accompanying record layouts. Commas are used as delimiters between fields. All numeric fields are right justified and space filled, e.g. use ___123, NOT 123___. All non-numeric fields are enclosed in double quotation marks and are left justified and space filled within these quotation marks, e.g. use "John Doe_____".

3. Give each record a unique record number, beginning with 1001 and incrementing by one, with no numbers skipped.

4. Do NOT include "$" or "%" or embedded commas or decimals points in any numeric data fields, except for row numbers fields, which will include a decimal point and one decimal place.

5. In any numeric data field designated by N/A, enter -99999. If a "Public Version" diskette is filed in any numeric data field for which data are "Withheld", enter -88888.

6. If a reporting carrier wished to apply data to a numeric field containing an N/A, the carrier must enter as a footnote to the field, the amount(s) and an explanation. The amount(s) must not be entered in the N/A's field. If there are no data applicable to an open field, enter zero.

D. Rounding Conventions

1. As specified in the accompanying Report Definition, all monetary figures must be rounded to the nearest thousand dollars.

E. Footnotes

1. If any data for the current period differs materially from those for the previous period and the difference is not self-explanatory but was caused by unusual circumstances not explained in a previous report, then include footnote text to explain the specific circumstances.

2. If the reporting carrier does not follow the procedures described in the row and column instructions of the attached Report Definition, it must explain any deviations from those procedures in an explanatory footnote. Such footnotes must provide detailed explanations of the procedures actually used by the carrier and its specific reasons for deviating from procedures prescribed by the Commission's Rules. This provision should not be interpreted to mean that deviations from the prescribed rules will automatically be approved by the Commission.

3. Footnotes must be included in the footnote text record(s) of the automated report.

F. Errata

1. Carriers are under a legal obligation to correct any erroneous data discovered in FCC Report 43-03. Submission containing corrected data must include references to indicate which data items were corrected since the previous submission.

2. These references must be included in the erratum record(s) of the automated report.

G. Data Record Descriptions

The seven data record types are described below. See pages 4 through 14 for record layouts. The file will consist of one Type H1 record, followed by one Type L1 record, followed by 216 J2 records, followed by one or more Type C3 records, followed by zero or more Type F2 records, followed by zero or more Type E3 records, followed by one Type T1 record.

Record Type H1	Header Record	One Type H1 record per file. The first record of each file. Contains identifying data. See page 4 for record layout.
Record Type L1	Label Record	One Type L1 record per file. The second record of each file. Contains report number, carrier name, etc. See page 5 for record layout.
Record Type J2	Joint Cost Data Record	216 Type J2 records per file. One Type J2 records for each of the 216 rows shown on Pages 2-15 of the accompanying Report Definition. Each record contains data values for that particular account broken out by the columns described on Page 19 of the accompanying Report Definition. See pages 6 & 7 for record layout.
Record Type C3	Confidential Treatment Record	One or more Type C3 records per file. Contains information to identify the data for which the carrier is seeking confidential treatment or to verify that the carrier is not seeking any confidential treatment. See pages 8 & 9 for record layout.
Record Type F2	Footnote Record	Optional. Zero or more Type F2 records per file. Contains explanatory footnote text. See page 10 & 11 for record layout.
Record Type E3	Erratum Record	Zero Type E3 records in the first submission of a year's data. One or more Type E3 records per file in revisions filed to correct that year's submission. Contains information to identify the data which was corrected in this submission. See pages 12 & 13 for record layout.
Record Type T1	Trailer Record	One Type T1 record per file. The last record of each file. Contains contact person, etc. See page 14 for record layout.

RECORD TYPE H1 - HEADER RECORD

Field	Item	Example	Position	Description
1	Record Number	1001	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. (See attached COSA Code Table) Format: Include quotation marks.
3	Record Type	"H1"	13-16	Always contains the letter H capitalized and the number 1 with no space between them. Format: Include quotation marks.
4	File Name	"LBIL94JC.U01"	18-31	The name of the ASCII file. Format: See page 1, paragraph B.4. Include quotation marks.
5	Year	1994	33-36	The year covered by the data.
6	Quarter #	0	38	Always contains the number 0 since this is an annual data file.
7	Data Entry Date	19950315	40-47	The date on which the data were last entered or revised. Format: YYYYMMDD.
8	Version	"U"	49-51	The version letter (P, C or U) capitalized (for Public, Confidential or Unrestricted) Format: Include quotation marks.
9	Submission #	1	53-54	0 for test data purposes only. 1 for first submission of a year's data. Higher numbers (2, 3, etc.) are used if needed for successive revisions to correct that year's submission. Format: Right justified and space filled.
10	End of Record Code	"XQ"	56-59	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: All fields are separated by commas.

The ruler lines (123456789 etc.) Included below and following with sample records are included only to assist the reader. Do not include ruler lines as records in the electronic filing.

```
        1         2         3         4         5  . . . . .   Ruler line
12345678901234567890123456789012345678901234567890123456789  . . . . .   Ruler line
Sample record:
1001,"LBIL","H1","LBIL94JC.U01",1994,0,19950315,"U", 1,"XQ"
```

RECORD TYPE L1 - LABEL RECORD

Field	Item	Example	Position	Description
1	Record Number	1002	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: Include quotation marks.
3	Record Type	"L1"	13-16	Always contains the letter L capitalized and the number 1 with no space between them. Format: Include quotation marks.
4	Report Number	"FCC REPORT 43-03"	18-35	Always contains "FCC REPORT 43-03" capitalized. Format: Include quotation marks.
5	Carrier	"Illinois Bell " (spaces until pos. 68)	37-68	Name of the carrier. Format: Left justified and space filled. Include quotation marks.
6	Study Area	"Illinois "	70-91	Name of the study area. Format: Left justified and space filled. Include quotation marks.
7	Period Covered	"Jan 1994 to Dec 1994"	93-114	Period covered by the data. Format: "mmm yyyy to mmm yyyy" Include quotation marks.
8	End of Record Code	"XQ"	116-119	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: All fields are separated by commas.

```
         1         2         3         4         5         6         7         8         9         0         1         1
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890
Sample record:
1002,"LBIL","L1","FCC REPORT 43-02","Illinois Bell                    ","                    ","Jan 1994 to Dec 1994","XQ"
```

RECORD TYPE J2 - JOINT COST DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1046	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: Include quotation marks.
3	Record Type	"J2"	13-16	Always contains the letter J capitalized and the number 2 with no space between them. Format: Include quotation marks.
4	Row Number	5200.0	18-23	Row number as identified on the accompanying Report Definition. Valid ranges: 230.0 to 750.0, 1220.0 to 7990.0. Format: Right justified and space filled, with one decimal place. Since all applicable row numbers are integers, append .0 to each row number.
5	Column (b) data	32592	25-33	This field contains the data corresponding to column (b) as shown in the Forms Section of the accompanying Report Definition. Do NOT override designated N/As. Format: Right justified and space filled Enter -99999 in all rows where a field is designated by N/A. All other fields must be populated. If there are no data applicable to an open field enter zero. Enter -88888 in integer rows on the "public version" diskette to indicate that confidential treatment has been requested.
6	Column (c) data	5432	35-43	Column (c) data Format: See Field 5 above.
7	Column (d) data	5432	45-53	Column (d) data Format: See Field 5 above.
8	Column (e) data	5432	55-63	Column (e) data Format: See Field 5 above.
9	Column (f) data	34567	65-73	Column (f) data Format: See Field 5 above.
10	Column (g) data	54327	75-83	Column (g) data Format: See Field 5 above.
11	Column (h) data	0	85-93	Column (h) data Format: See Field 5 above.
12	Column (i) data	16296	95-103	Column (i) data Format: See Field 5 above.
13	Column (j) data	88899	105-113	Column (j) data Format: See Field 5 above.
14	Column (k) data	2345	115-123	Column (k) data Format: See Field 5 above.
15	Column (l) data	4801	125-133	Column (l) data Format: See Field 5 above.
16	Column (m) data	9150	135-143	Column (m) data Format: See Field 5 above.

RECORD TYPE J2 - JOINT COST DATA RECORD(continued)

Field	Item	Example	Position	Description
17	End of Record Code	"XQ"	145-148	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: Separate all fields with commas.

Footnote records are needed if any data for the current period differ materially from those for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition. Add one or more Type F2 record(s) (after the remaining Type J2 and C3 records) containing footnote text to explain the specific circumstances.

```
        1         2         3         4         5         6         7         8         9         1
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234
Sample records:
1003,"LBIL","J2",5001.0,     5432,     5432,  -99999,  -99999,  -99999,  -99999,  -99999,  -99999,
1034,"LBIL","J2", 525.0,    10864,    10864,  -99999,  -99999,  -99999,  -99999,  -99999,  -99999,
1046,"LBIL","J2",5200.0,    32592,     5432,     5432,     5432,    34567,    54327,        0,    16296,

    1         1         1         1
    1         2         3         4
5678901234567890123456789012345678901234567890123456789012345678
Continuation of sample records:
  -99999,    36942,   -99999,   -99999,"XQ"
  -99999,        0,   -99999,    49405,"XQ"
   88899,     2345,     4801,     9150,"XQ"
```

RECORD TYPE C3 - CONFIDENTIAL TREATMENT RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1219	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: Include quotation marks.
3	Record Type	"C3"	13-16	Always contains the letter C capitalized and the number 3 with no space between them. Format: Include quotation marks.
4	Record Number (for the confidential data)	1003	18-21	This field contains the record number of the record which contains the data for which the carrier is seeking confidential treatment. If the request is for the entire column(s) or the entire submission, use 9999. If no confidential treatment is being requested, then use 0. Format: Right justified and space filled.
5	Table Number	"I "	23-28	This field contains the table number (Roman numerals) of the table in which the the confidential data appear. If the request is for the entire submission, enter "ZZZZ". If no confidential treatment is being requested then enter " ". Format: Include quotation marks. Left justified and space filled.
6	Row Number	5001.0	30-35	This field contains the row number of the row which contains the confidential data as identified in the accompanying Report Definition. If the request is for the entire column(s), an entire table or the entire submission, enter 9999.0. If no confidential treatment is being requested then use 0.0. Format: Right justified and space filled, with one decimal place. For row numbers that are integers, append .0 to the row number. For row numbers with one decimal place (e.g., 2215.1), use the row number as shown.
7	Column Label	"B "	37-40	This field contains the column letter of the confidential data as identified in the accompanying Report Definition. If the request is for an entire row, an entire table, or the entire submission, enter "ZZ". If the request is for more than one column but less than the entire row, then populate this field and as many as needed of fields 8 thru 17. If no confidential treatment is requested, then enter " " in all of fields 7 thru 26. Format: Include quotation marks. Left justified and space filled.

RECORD TYPE C3 - CONFIDENTIAL TREATMENT RECORD (continued)

Field	Item	Example	Position	Description
8	Second Column Label	"C "	42-45	.....
9	Third Column Label	"I "	47-50	. Fields 8 thru 26 are similar
.				. to Field 7 and are used
.				. when the request is for
.				. the same row and more than
.				. one column.
26	Twentieth Col. Label	" "	132-135	..... Otherwise, enter " ".
				Note: Fields 18 thru 26 are not used in this data record in this data file.
27	End of Record Code	"XQ"	137-140	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: All fields are separated by commas.

```
         1         2         3         4         5         6         7         8         9
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456
Sample records:
1219,"LBIL","C3",1003,"I   ",5001.0,"B ","C ","I ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1220,"LBIL","C3",1012,"I   ", 520.0,"B ","C ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1221,"LBIL","C3",1034,"I   ", 525.0,"ZZ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1222,"LBIL","C3",9999,"I   ",9999.0,"L ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",

                                                - OR -

1219,"LBIL","C3",   0,"    ",   0.0," ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
```

```
   1         1         1         1         1
   0         1         2         3         4
7890123456789012345678901234567890123456789012345678890
Continuation of sample records:
"  ","  ","  ","  ","  ","  ","  ","  ","  ","XQ"
"  ","  ","  ","  ","  ","  ","  ","  ","  ","XQ"
"  ","  ","  ","  ","  ","  ","  ","  ","  ","XQ"
"  ","  ","  ","  ","  ","  ","  ","  ","  ","XQ"

                                    - OR -

"  ","  ","  ","  ","  ","  ","  ","  ","  ","XQ"
```

RECORD TYPE F2 - FOOTNOTE TEXT RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1223	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: Include quotation marks.
3	Record Type	"F2"	13-16	Always contains the letter F capitalized and the number 2 with no space between them. Format: Include quotation marks.
4	Record Number (for the footnoted data)	1003	18-21	This field contains the record number of the record which contains the footnoted data. If the footnote pertains to the entire column(s), an entire table, or the entire submission, use 9999. Format: Right justified and space filled.
5	Table Number	"I "	23-28	This field contains the table number (Roman numerals) of the table in which the footnoted data appears. If the footnote pertains to an entire table, use "ZZZZ". Format: Include quotation marks. Left justified and space filled.
6	Row Number	5001.0	30-35	This field contains the row number of the row which contains the footnoted data as identified in the accompanying Report Definition. If the footnote pertains to the entire column(s), an entire table, or the entire submission, enter 9999.0. Format: Right justified and space filled, with one decimal place. For row numbers that are integers, append .0 to the row number. For row numbers with one decimal place (e.g., 2215.1), use the row number as shown.
7	Column Label	"C "	37-40	This field contains the column letter(s) of the footnoted data as identified in the accompanying Report Definition. If the footnote pertains to an entire row, an entire table, or the entire submission, enter "ZZ". Format: Include quotation marks. Left justified and space filled.

RECORD TYPE F3 - FOOTNOTE TEXT RECORD (continued)

Field	Item	Example	Position	Description
8	Footnote Number	1	42-44	The number of this particular footnote. Valid range: 1 to 999. Format: Right justified and space filled.
9	Sequence Number	1	46-47	The sequence number of the record within the footnote. In other words, the order of the specific record in the sequence of records which, when combined, will provide the entire footnote. Valid range: 1 to 99. Format: Right justified and space filled.
10	Footnote Text	"Footnote text (Spaces until pos. 105)"	49-105	The text of the footnote or of the continuation line. Format: Include quotation marks at the beginning and end of this field and Left justify within these quotation marks.
11	End of Record Code	"XQ"	107-110	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: All fields are separated by commas.

```
                                                                                                                    1         1
         1         2         3         4         5         6         7         8         9         0         1
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901
Sample records:
1223,"LBIL","F2",1003,"I    ",5001.0,"C ",  1, 1,"Footnote text for footnote 1                                    ","XQ"
1224,"LBIL","F2",1003,"I    ",5001.0,"C ",  1, 2,"continuation text for footnote 1                                ","XQ"
1225,"LBIL","F2",1003,"I    ",5001.0,"C ",  1, 3,"last line of footnote 1                                         ","XQ"
1226,"LBIL","F2",1034,"I    ", 525.0,"ZZ",  2, 2,"Footnote 2 pertains to all cols. of Table I row  525.0 ","XQ"
1227,"LBIL","F2",9999,"I    ",9999.0,"K ",  3, 3,"Footnote 3 pertains to all rows of Table I column K    ","XQ"
```

RECORD TYPE E3- ERRATUM RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1228	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: Include quotation marks.
3	Record Type	"E3"	13-16	Always contains the letter E capitalized and the number 3 with no space between them. Format: Include quotation marks.
4	Record Number (for the corrected data)	1003	18-21	This field contains the record number of the record which contains the data which were corrected in this submission. If the entire column(s), an entire table, or the entire submission was corrected, use 9999. Format: Right justified and space filled.
5	Table Number	"I "	23-28	This field contains the table number (Roman numerals) of the table in which the corrected data appear. If an entire table or submission was corrected, use "ZZZZ". Format: Include quotation marks. Left justified and space filled.
6	Row Number	5001.0	30-35	This field contains the row number of the of the row which contains the corrected data as identified in the accompanying Report Definition. If the entire column(s), an entire table, or the entire submission was corrected, enter 9999.0. Format: Right justified and space filled, with one decimal place. For row numbers that are integers, append .0 to the row number. For row numbers with one decimal place (e.g., 2215.1), use the row number as shown.
7	Column Label	"B "	37-40	This field contains the column letter of the corrected data as identified in the accompanying Report Definition. If an entire row, an entire table, or the entire submission was corrected, enter "ZZ". If more than one column but less than the entire row was corrected, then populate this field and as many as needed of fields 8 thru 26. Format: Include quotation marks. Left justified and space filled.

RECORD TYPE E3 - ERRATUM RECORD (continued)

Field	Item	Example	Position	Description
8	Second Column Label	"C "	42-45	.....
9	Third Column Label	"I "	47-50	. Fields 8 thru 26 are similar
.				. to Field 7 and are used
.				. when the correction is in
.				. the same row and more than
.				. one column.
26	Twentieth Col. Label	" "	132-135	..... Otherwise, enter " ".
				Note: Fields 18 thru 26 are not used in this data record in this data file.
27	Footnote Number	1	137-138	This field contains the footnote number that explains the correction. If there is no footnote, use a zero. Format: Right justified and space filled.
28	End of Record Code	"XQ"	140-143	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: All fields are separated by commas.

```
         1         2         3         4         5         6         7         8         9
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456
Sample records:
1228,"LBIL","E3",1003,"I   ",5001.0,"B ","C ","I ","  ","  ","  ","  ","  ","  ","  ","  ",
1229,"LBIL","E3",1033,"I   ", 525.0,"ZZ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1230,"LBIL","E3",9999,"I   ",9999.0,"K ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
```

```
   1         1         1         1         1
   0         1         2         3         4
78901234567890123456789012345678901234567890123
Continuation of sample records:
"  ","  ","  ","  ","  ","  ","  ","  ","  ", 1,"XQ"
"  ","  ","  ","  ","  ","  ","  ","  ","  ", 2,"XQ"
"  ","  ","  ","  ","  ","  ","  ","  ","  ", 3,"XQ"
```

RECORD TYPE T1 - TRAILER RECORD

Field	Item	Example	Position	Description
1	Record Number	1231	1-4	The sequential number of this record within this data file plus 1000. Format: Right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: Include quotation marks.
3	Record Type	"T1"	13-16	Always contains the letter T capitalized and the number 1 with no space between them. Format: Include quotation marks.
4	Contact Person	"John Doe " (spaces until pos. 59)	18-59	The name of the person to contact if there are questions about the report. Format: Include quotation marks.
5	Telephone #	"(202) 555-1212 x123 "	61-82	The Contact Person's telephone number. Format: Include quotation marks.
6	End of Record Code	"XQ"	84-87	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: Include quotation marks.

Note: All fields are separated by commas.

```
        1         2         3         4         5         6         7         8
12345678901234567890123456789012345678901234567890123456789012345678901234567
Sample record:
1231,"LBIL","T1","John Doe                                    ","(202) 555-1212 x123 ","XQ"
```

A. Introduction

This document contains the page layout and detailed specifications for the paper report to be filed as FCC Report 43-03, the ARMIS Joint Cost Report.

B. General Instructions

1. See sections B and C on pages 1 and 2 of the accompanying Reporting Procedures for a discussion of the Confidential Version, the Public Version, and the Unrestricted Version of this report and for a definition and discussion of data items that are "Not Available" or are "Withheld."

2. The ruler lines included on the page layouts with the column titles are included only to assist the reader. Do not include ruler lines as lines in the report.

3. The paper report must be printed on 8 1/2 inch by 11 inch paper. For ease of preparation, an original may be produced on larger paper and reduced to this size for submission. Copies filed must be legible and permanent, in black ink. The report may be printed in portrait mode (8 1/2 inches across the top of the page) or landscape mode (11 inches across the top of the page). In portrait mode, the printing should not be smaller than 17 characters per inch and 8 lines per inch; in landscape mode, the printing should not be smaller than 15 characters per inch and 10 lines per inch.

C. Data Entry Conventions

1. If an entry is to be a subtraction, indicate so by placing a minus sign in the column immediately preceding the numeric data, e.g., use -4 or (4), NOT - 4.

2. Items that need not be reported because they do not apply are designated by N/A. If a "Public Version" report is filed, enter W/H in any numeric data field for which data are "Withheld". DO NOT override N/As. If a reporting carrier wishes to apply data to a field containing an N/A, the carrier should enter as a footnote to the field, the amount(s) and an explanation. All other fields must be populated. If there are no data applicable to an open field enter zero.

D. Rounding Conventions

1. As specified in the accompanying Report Definition, all monetary figures must be rounded to the nearest thousand dollars.

E. Footnotes

1. If any data for the current period differs materially from those for the previous period and the difference is not self-explanatory but was caused by unusual circumstances not explained in a previous report, then include footnote text to explain the specific circumstances.

2. If the reporting carrier does not follow the procedures described in the row and column instructions of the attached Report Definition, it must explain any deviations from those procedures in an explanatory footnote. Such footnotes must provide detailed

explanations of the procedures actually used by the carrier and its specific reasons for deviating from procedures prescribed by the Commission's Rules. This provision should not be interpreted to mean that deviations from the prescribed rules will automatically be approved by the Commission.

3. Footnotes must be included in the footnote table(s) of the paper report, not on individual table pages.

F. **Errata**

1. Carriers are under a legal obligation to correct any erroneous data discovered in FCC Report 43-03. Submission containing corrected data must include references to indicate which data items were corrected since previous submission.

2. These references must be included in the erratum table(s) of the paper report.

G. **Page Layouts**

1. The page layouts are illustrated in the Form section of the accompanying Report Definition.

2. The following note must appear at the bottom of all pages, where applicable. THE COMPANY HAS REQUESTED CONFIDENTIAL TREATMENT FOR SOME DATA ON THIS PAGE. SEE THE CONFIDENTIAL TREATMENT TABLE FOR SPECIFIC INFORMATION.

3. The paper report will consist of the following pages in order:

	Illustrated in Report Def.- Form on Page
Table I - Regulated/Nonregulated Data	2 - 15

	Illustrated in Paper Report Specs. on Page
The Confidential Treatment Table (at least one page and as many pages as needed).	3
The Footnote Table (at least one page and as many pages as needed).	4
The Erratum Table (for submission number 2 or higher, as many pages as needed).	5
The Certification Page	6

FCC REPORT 43-03
ARMIS JOINT COST REPORT

Approved by OMB
3060-0513
Expires 08/31/85

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy to mmm yyyy CONF. TREATMENT TABLE
COSA: xxxx PAGE 1 OF x

CONFIDENTIAL TREATMENT TABLE

Table	Row	Column(s)	
(a)	(b)	(c)	
xxxx	1234.1	xx,xx,xx,xx, x, x, x, x, x, x, x, x, x, x, x, x,...	Ruler Line

sample entries:

I	5001.0	B ,C ,I	
I	520.0	B ,C	
I	525.0	ALL	
I	ALL	L	

THE COMPANY HAS REQUESTED CONFIDENTIAL TREATMENT FOR THE ABOVE DATA IN THIS REPORT.

-OR-

THE COMPANY HAS NOT REQUESTED CONFIDENTIAL TREATMENT FOR ANY DATA IN THIS REPORT.

FCC REPORT 43-03
ARMIS JOINT COST REPORT

Approved by OMB
3060-0513
Expires 08/31/95

COMPANY: xxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxx
PERIOD: From mmmm yyyy To mmmm yyyy
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
FOOTNOTE TABLE
PAGE 1 OF x

FOOTNOTE TABLE

Table (a)	Row (b)	Col (c)	FN# (d)	Footnote Text (e)
xxxx	1234.1	xxx	123	xxxxxxxxxxxxxxxxxxxx

FCC REPORT 43-03
ARMIS JOINT COST REPORT

Approved by OMB
3060-0513
Expires 08/31/96

COMPANY: xxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxx
PERIOD: From mmmm yyyy To mmmm yyyy
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
ERRATUM TABLE
PAGE 1 OF x

ERRATUM TABLE

Table (a)	Row (b)	Column(s) (c)	FN# (d)	
xxxx	1234.1	xx,xx ,xx ,xx ,xx ,xx ,xx ,xx ,xx ,xx	123	... Ruler Line

sample entries:

I	5001.0	B ,C ,I	1	
I	525.0	ALL	2	
I	ALL	K	3	

THE ABOVE DATA HAVE BEEN CORRECTED IN THIS SUBMISSION.
SEE THE FOOTNOTE TABLE FOR FOOTNOTES WHERE APPLICABLE.

CERTIFICATION

I certify that I am an officer of _____;
that I have examined the foregoing report _____and that to the best of my knowledge, information, and belief, all statements of fact contained in this report are true and that said report is an accurate statement of the affairs of the above named respondent in respect to the data set forth herein for the period from _____ to _____.

PRINTED NAME _____

POSITION _____

SIGNATURE _____

DATE _____

(Persons making willful false statements in this report form can be punished by fine or imprisonment under the Communications Act, 47 U.S.C. 220(e).)

CONTACT PERSON _____

TELEPHONE NUMBER _____

APPENDIX D

DIVESTED BOC INDEX

Holding Company	Combined Operating Companies	Operating Company	Combined Study Areas	Study Area	COSA Code
Ameritech					AMTR
		1. Illinois Bell		- Illinois	LBIL
		2. Indiana Bell		- Indiana	NBIN
		3. Michigan Bell		- Michigan	MBMI
		4. Ohio Bell		- Ohio	OBOH
		5. Wisconsin Bell		- Wisconsin	WTWI
Bell Atlantic Network Serv. Corp.					BATR
	1. the Chesapeake and Potomac Telephone Companies				CPTC
		1. C&P (D.C.)		- Dist. of Columbia	CDDC
		2. C&P of Maryland		- Maryland	CMMD
		3. C&P of Virginia		- Virginia	CVVA
		4. C&P of West Virginia		- West Virginia	CWW
	2. Bell of PA and Diamond State				PDTC
		5. Diamond State Telephone		- Delaware	DSDE
		6. Bell of Pennsylvania		- Pennsylvania	PAPA
		7. New Jersey Bell		- New Jersey	NJNJ
BellSouth Telecommunications, Inc.					BSTR
				- Florida	SBFL
				- Georgia	SBGA
				- North Carolina	SBNC
				- South Carolina	SBSC
				- Alabama	SCAL
				- Kentucky	SCKY
				- Louisiana	SCLA
				- Mississippi	SCMS
				- Tennessee	SCTN
NYNEX					NXTR
		1. New England Telephone			NETC
				- Maine	NEME
				- Massachusetts	NEMA
				- New Hampshire	NENH
				- Rhode Island	NERI
				- Vermont	NEVT
		2. New York Telephone		- New York	NYNY
Pacific Telesis					PTTR
		1. Pacific Bell		- California	PTCA
		2. Nevada Bell		- Nevada	PTNV

DIVESTED BOC INDEX

Holding Company	Combined Operating Companies	Operating Company	Combined Study Areas	Study Area	COSA Code
Southwestern Bell Telephone Co.					SWTR
				- Arkansas	SWAR
				- Kansas	SWKS
				- Missouri	SWMO
				- Oklahoma	SWOK
				- Texas	SWTX
			all except Kansas		SWAG
U.S. West Communications, Inc.					USTR
				- Arizona	MSAZ
				- Colorado	MSCO
				- Idaho	MSID
				- Montana	MSMT
				- New Mexico	MSNM
				- Utah	MSUT
				- Wyoming	MSWY
				- Iowa	NWIA
				- Minnesota	NWMN
				- Nebraska	NWNE
				- North Dakota	NWND
				- South Dakota	NWSD
				- Idaho	PNID
				- Oregon	PNOR
				- Washington	PNWA
Total Divested Bell Operating Companies					TBOC

INDEPENDENT COMPANY INDEX

Holding Company	Combined Operating Companies	Operating Company	Combined Study Areas	Study Area	COSA Code
Alascom, Inc.				- Alaska	AKAK
Cincinnati Bell Telephone			- Ohio & Kentucky		CBTC
Citizens Telecom					CTTC
		1. Citizens Utilities		- California	CUCA
		2. Citizens Telcom of New York		- New York	CTNY
				- Upstate	CTUP
				- Red Hook	CTRH
				- Western Counties	CTWC
Commonwealth Telephone Co.				- Pennsylvania	CWTC
GTE Service Operations					GTTC
		1. GTE California Inc.		- California	GTCA
		2. GTE Florida Inc.		- Florida	GTFL
		3. GTE Northwest Inc.			GTNW
				- Idaho	GTID
				- Montana	GTMT
				- Oregon	GTOR
				- Washington	GTWA
				- West Coast CA	GNCA
				- Contel/Oregon	COOR
				- Contel/Washington	COWA
		4. GTE South Inc.			GTSO
				- Alabama	GTAL
				- Georgia	GTGA
				- Kentucky	GTKY
				- North Carolina	GTNC
				- South Carolina	GTSC
				- Virginia	GTVA
				- Alltel/Illinois	GLIL
		5. GTE Southwest Inc.			GTSW
				- Arkansas	GTAR
				- New Mexico	GTNM
				- Oklahoma	GTOK
				- Texas	GTTX
		6. GTE North Inc.			GTMW
				- Illinois	GTIL
				- Indiana	GTIN
				- Michigan	GTMI
				- Ohio	GTOH

INDEPENDENT COMPANY INDEX

Holding Company	Combined Operating Companies	Operating Company	Combined Study Areas	Study Area	COSA Code
GTE Service Corporation		GTE North Inc (cond't)		- Pennsylvania	GTPA
				- Wisconsin	GTWI
				- General Offices	GTGO
				- Contel/Illinois	COIL
				- Contel/Indiana	COIN
			- Contel of Pennsylvania		COPT
				- Pennsylvania	COPA
				- Quaker State	COQS
		7. GTE Midwest Inc.			GTMD
				- Iowa	GTIA
				- Minnesota	GTMN
				- Missouri	GTMO
				- Nebraska	GTNE
			- Contel of Iowa Comp.		COIT
				- Contel/Iowa	COIA
				- Contel/Systems of Iowa	COSI
			- Contel of Missouri Comp.		COMT
				- Contel/Missouri	COMO
				- Contel/Systems of Missouri	COCM
				- Contel/Eastern Missouri	COEM
		8. GTE Hawaiian Tel. Co. Inc.		- Hawaii	GTHI
		9. GTE Alaska		- Alaska	GTAK
	1. Continental Telephone Company				COTC
		1. Contel of Texas			COTX
		2. Contel of Virginia			COVA
		3. Contel of California			COCT
				- Contel Cal/Arizona	COAZ
				- Contel Cal/California	COCA
				- Contel Cal/Nevada	CONV
		4. Contel of the South			COSO
				- Contel So/Alabama	COAL
				- Alltel/Indiana	GLIN
				- Alltel/Michigan	GLMI
				- Contel/Kentucky	COKY
				- Contel/Minnesota	COMN
				- Contel/North Carolina	CONC
				- Contel/South Carolina	COSC
			- Contel of Arkansas Total		COAT
				- Contel of Arkansas	COAR
				- Systems of Arkansas	COSA

INDEPENDENT COMPANY INDEX

Holding Company	Combined Operating Companies	Operating Company	Combined Study Areas	Study Area	COSA Code
Lincoln Telephone Company				- Nebraska	LTNE
Puerto Rico Telephone Company				- Puerto Rico	PRPR
Rochester Telephone Operating Companines					RTTC
		1. Rochester Telephone		- New York	RTNY
		2. Ausable Valley Telephone		- New York	RTAV
		3. Breezewood Telephone		- Pennsylvania	RTBT
		4. CC&S Telco		- Michigan	RTCM
				- Ohio	RTCO
		5. Canton Telephone		- Pennsylvania	RTCT
		6. Enterprise Telephone		- Pennsylvania	RTET
		7. Highland Telephone		- New York	RTHT
		8. Inland Telephone		- Illinois	RTIT
		9. Lakeshore Telephone		- Wisconsin	RTLW
		10. Lakeside Telephone		- Illinois	RTLI
		11. Lakewood Telephone		- Pennsylvania	RTLP
		12. Monroeville Telephone		- Alabama	RTMA
		13. Mt. Pulaski Telephone		- Illinois	RTMP
		14. Midland Telephone		- Illinois	RTMT
		15. Midway Telephone		- Michigan	RTMM
		16. Mondovi Telephone		- Wisconsin	RTMW
		17. Ontonogan Telephone		- Michigan	RTOT
		18. Oswayo River Telephone		- Pennsylvania	RTOS
		19. Prairie Telephone		- Illinois	RTPT
		20. S & A Telephone		- Kansas	RTKS
		21. Senca Gorham Telephone		- New York	RTSG
		22. Sylvan Lake Telephone		- New York	RTSL
		23. Southland Telephone		- Alabama	RTSA
				- Florida	RTSF
		24. Schuyler Telephone		- Iowa	RTSO
				- Illinois	RTSI
		25. Thorntown Telephone		- Indiana	RTTT
		26. Urban Telephone		- Wisconsin	RTUW
Southern New England Telephone				- Connecticut	SNCT
SPRINT/Centel Telephone Company					CETC
		1. Central of Florida		- Florida	CEFL
		2. Central of Illinois		- Illinois	CEIL
		3. Central of Virginia		- Virginia	CEVA

INDEPENDENT COMPANY INDEX

Holding Company	Combined Operating Companies	Operating Company	Combined Study Areas	Study Area	COSA Code
SPRINT/Centel Telephone Company					
		4. Central Telephone Company			CETO
				- North Carolina	CENC
				- Nevada	CENV
		5. Central of New Jersey		- New Jersey	CENY
		6. Central of Texas		- Texas	CETX
SPRINT/United Management Company					UTTC
		1. United Tel. Co. of Florida		- Florida	UTFL
		2. United Tel. Co. of Indiana		- Indiana	UTIN
		3. United Tel. Co. of Kansas		- Kansas	UTKS
		4. United Tel. Co. of Minn.		- Minnesota	UTMN
		5. United Tel. Co. of Missouri		- Missouri	UTMO
		6. United Tel. Co. of Neb.		- Nebraska	UTNE
		7. United Tel. Co. of N. Jer.		- New Jersey	UTNJ
		8. Carolina Tel. and Tel. Co.		- North Carolina	UTNC
		9. United Tel. Co. of Ohio		- Ohio	UTOH
		10. SPRINT/United - Northwest			UTNW
				- Oregon	UTOR
				- Washington	UTWA
		11. United Tel. Co. of Penn.		- Pennsylvania	UTPA
		12. United Tel. Co. of S. C.		- South Carolina	UTSC
		13. United Tel. Co. of Texas		- Texas	UTTX
		14. United Tel. Co. of Wyoming		- Wyoming	UTWY
		15. SPRINT/United - Southesst Inc			UTIM
				- Tennessee	UTTN
				- Virginia	UTVA
AT&T Communications					ATTC
Vista Telephone Companies					VITC
Western Reserve Telephone					WRTC
Total Independent Companies					TICO
Total Industry					TOTL